

Bill No. 74 of 1951.

A BILL RESPECTING SAND AND GRAVEL.

NOTE.

This Bill enacts a new Act to be known as "*The Sand and Gravel Act*".

The circumstances resulting in the introduction of this Bill are set out in the recitals.

In a recent action in the courts it was adjudged that the owners of minerals were entitled to sand and gravel and that the owners of the surface of land were not entitled to the sand and gravel in that particular case. The judgment made it clear that the decision was not intended to affect ownership of sand and gravel in the Province generally but only the sand and gravel in the particular land involved in the action. The judgment also pointed out that ownership of sand and gravel in any particular case is purely a question of fact to be determined on the evidence introduced in that case. The judgment indicated that ownership of sand and gravel is dependent on whether the sand and gravel constitutes the ordinary soil or subsoil of the district and whether it is regarded as a mineral in the ordinary language of men dealing in minerals at the time any particular disposition is made.

The ownership of sand and gravel appears to be a matter of doubt that is dependent on facts which may vary from parcel to parcel. It appears desirable in the public interest to remove these doubts by enacting an Act applicable to all lands in the Province including Crown lands.

The Bill provides that the owner of the surface of land is the owner of all sand and gravel on the surface or that is obtained by excavating from the surface or otherwise recovered by surface operations.

Such sand and gravel is not deemed to be a mine, mineral or valuable stone and notwithstanding any patent, title, conveyance or other document heretofore or hereafter issued or made that contains or reserves mines, minerals or valuable stone, the owner of the minerals in land is not entitled to the sand and gravel that is recovered from the surface of the land as against the owner of the surface of the land.

The Bill provides that where sand and gravel has been dealt with or removed from land prior to the coming into force of this Act by the owner of minerals or by persons

claiming through him who are acting in good faith and in the honest belief that they were entitled to the sand and gravel then the owner of the surface shall not have any right of action for damages or for compensation for any sand or gravel removed prior to the coming into force of the Act. Although actions for compensation for gravel already taken are barred, actions which might have been maintained irrespective of the ownership of the gravel are not barred. For instance, it is not intended to bar the surface owner from suing the mineral owner for damages arising from a motor vehicle accident resulting from the negligent operation of a gravel truck by the mineral owner.

This Bill comes into force upon assent.

KENNETH A. MCKENZIE,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 74 of 1951.

An Act respecting Sand and Gravel.

(Assented to _____, 1951.)

WHEREAS in an action in the Supreme Court of Alberta between Western Minerals Limited and Western Leaseholds Limited, Plaintiffs, and Joseph Albert Gaumont, Defendant, and between Western Minerals Limited and Western Leaseholds Limited, Plaintiffs, and James Warren Brown and Beaver Sand and Gravel Limited, Defendants, it was adjudged that the plaintiffs who were the owners of minerals were entitled to sand and gravel and that the defendants who were the owners of the surface of land were not entitled to the said sand and gravel; and

Whereas the learned trial judge made it clear in his judgment that his decision did not affect ownership of sand and gravel in Alberta generally but only that contained in the particular land involved in the action, and that the ownership of the sand and gravel in any particular case is purely a question of fact to be determined on the evidence introduced in that case; and

Whereas the ownership of sand and gravel becomes a matter of doubt and uncertainty if it is dependent on whether evidence indicates that it constitutes the ordinary soil or subsoil of the district or that its occurrence is rare and exceptional and on whether it is regarded as a mine, mineral or valuable stone in the vernacular of the mining world, the commercial world and land owners at the time of any disposition in question; and

Whereas it appears desirable in the public interest to resolve these doubts and uncertainties and to allay fears:

Therefore His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Sand and Gravel Act*". Short title
2. This Act applies to all lands in the Province and to the owners thereof, including the Crown in the right of the Province and the lands owned by the Crown in the right of the Province. Application
3. The owner of the surface of land is and shall be deemed at all times to have been the owner of and entitled to all sand and gravel on the surface of that land and all sand Sand and gravel recovered by surface operations

and gravel obtained by stripping off the overburden, excavating from the surface, or otherwise recovered by surface operations.

Sand and gravel recovered by surface operations is part of surface

4. (1) The sand and gravel referred to in section 3 shall not be deemed to be a mine, mineral or valuable stone but shall be deemed to be and to have been a part of the surface of land and to belong to the owner thereof.

(2) Notwithstanding any patent, title, conveyance, lease, license, agreement, disposition or other document heretofore or hereafter issued or made that contains or reserves mines, minerals or valuable stone, the owner of the mines, minerals or valuable stone in any land shall not be entitled to the sand and gravel in that land referred to in section 3 as against the owner of the surface of such land.

Right of action

5. Where sand and gravel has been dealt with or removed from any land prior to the coming into force of this Act by the owner of the mines, minerals or valuable stone, or by any person claiming through him, acting in good faith and in the honest belief that he was entitled thereto, the owner of the surface of the land shall not have any right of action for damages or for compensation by reason of such dealing with or removal of the sand and gravel prior to the coming into force of this Act, other than such action as he would have had if the person removing the sand and gravel was the owner of it.

Coming into force

6. This Act shall come into force on the day upon which it is assented to.

No. 74.

FOURTH SESSION
ELEVENTH LEGISLATURE

15 GEORGE VI

1951

BILL

An Act respecting Sand and Gravel.

Received and read the

First time

Second time

Third time

HON. MR. TANNER.
