

• 1886 GEORGE H. FIELDING AND }  
 • Feb. 24, 25 ANTHONY J. MANLEY (PLAIN- } APPELLANTS;  
 & 26. TIFFS)..... }  
 \* May 17.

AND

CHARLES F. MOTT, EDWARD }  
 ARCHIBALD, GEORGE W. }  
 STUART, ALEXANDER KENT } RESPONDENTS.  
 ARCHIBALD, AND GEORGE A. }  
 LESLIE (DEFENDANTS)..... }

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA

*Mines and Minerals - Mining lease—Application for—Right of entry—Conditions precedent—Conflicting titles to land.*

*Held*, affirming the judgment of the court below, that where a mining lease is obtained over private lands in Nova Scotia the lessees must obtain from the owners of the land permission to enter either by special agreement or in accordance with the provisions of the mining act (1).

Mining leases may be granted in all districts whether proclaimed or unproclaimed.

A mining lease is not invalid because it includes a greater number

PRESENT—Sir W. J. Ritchie C.J., and Strong, Fournier, Henry and Taschereau JJ.

of areas than is provided by the statute such provision being only directory to the commissioner.

The issue of a lease cures any irregularities in the application for a license or in the license itself in the absence of fraud on the part of the licensee.

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FIELDING

v.

MOTT.

Ritchie C.J.

APPEAL from a decision of the Supreme Court of Nova Scotia (1), refusing to set aside a verdict for the defendants and order a new trial.

The action in this case was one of ejectment brought by the plaintiffs to obtain possession of certain mining lands in Nova Scotia of which they were lessees. The defendants also held leases of the lands in question and claimed also to be owners of the soil. The several grounds of objection to the leases granted to the defendants and also the grounds upon which the plaintiffs claimed to be entitled to possession of the lands are fully set out in the judgment of the court below delivered by Mr. Justice Thompson and reported in 6 Russ. p Geld. page 339.

*Archibald* for the appellants cited *Shipp v. Miller's Heirs* (2); *Burke v. Niles* (3); *Finlay v. Williams* (4).

*Graham* Q.C. and *Sedgwick* Q.C. for the respondents.

Sir W. J. RITCHIE C.J.—I think the judgment of the Supreme Court of Nova Scotia, as delivered by Thompson J. in this case, conclusive against the appellants. It appears to me that the law and the merits of the case are alike with the respondents. I had not on the argument, and have not now, any doubt as to the correctness of the conclusion arrived at by the court below and do not think I can, with advantage, add anything to what has been so clearly, forcibly and conclusively put forward by Mr. Justice Thompson in delivering the judgment in the court below.

(1) 6 Russ. &amp; Geld. 339.

(2) 2 Wheaton 316.

(3) 2 Han. (N.B.) 166.

(4) 9 Cranch 164.

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FIELDING for the reasons given by the court below.

v.

MOTT.Strong J.

FOURNIER, HENRY and TASCHEREAU JJ. concurred.

*Appeal dismissed with costs.*

Solicitors for appellants: *J. R. & T. Ritchie.*

Solicitors for respondents: *Meagher, Drysdale, & Newcombe.*

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