

WILLIAM A. TEMPLE AND OTHERS } APPELLANTS;
 (DEFENDANTS)..... }

1897

*Feb. 23.

*May 1.

AND

THE ATTORNEY GENERAL OF }
 NOVA SCOTIA AND ROBERT D. } RESPONDENTS.
 EVANS (PLAINTIFFS)

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Mines and minerals—Lease of mining areas—Rental agreement—Payment of rent—Forfeiture—R. S. N. S. 5 ser. c. 7--52 V. c. 23 (N.S.)

By R. S. N. S. 5 ser. ch. 7, the lessee of mining areas in Nova Scotia was obliged to perform a certain amount of work thereon each year on pain of forfeiture of his lease which, however, could only be effected through certain formalities. By an amendment in 1889 (52 Vic. ch. 23), the lessee is permitted to pay in advance an annual rental in lieu of work, and by subsec. (c) the owner of any leased area may, by duplicate agreement in writing with the Commissioner of Mines, avail himself of the provisions of such annual payment and "such advance payments shall be construed to commence from the nearest recurring anniversary of the date of the lease." By sec. 7 all leases are to contain the provisions of the Act respecting payment of rental and its refund in certain cases, and by sec. 8 said sec. 7 was to come into force in two months after the passing of the Act.

Before the Act of 1889 was passed a lease was issued to E. dated June 10th, 1889, for twenty-one years from May 21st, 1889. On June 1st, 1891, a rental agreement under the amending Act was executed under which E. paid the rent for his mining areas for three years, the last payment being in May, 1893. On May 22nd, 1894, the commissioner declared the lease forfeited for non-payment of rent for the following year and issued a prospecting license to T. for the same areas. E. tendered the year's rent on June 9th, 1894, and an action was afterwards taken by the Attorney General, on relation of E., to set aside said license as having been illegally and improvidently granted.

Held, affirming the judgment of the Supreme Court of Nova Scotia in such action, that the phrase "nearest recurring anniversary of the

*PRESENT :—Sir Henry Strong C.J. and Gwynne, Sedgewick, King and Girouard JJ.

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date of the lease" in subsec. (c) of sec. 1, Act of 1889, is equivalent to "next or next ensuing anniversary," and the lease being dated on June 10th no rent for 1894 was due on May 22nd of that year at which date the lease was declared forfeited, and E.'s tender on June 9th was in time. *Attorney General v. Sheraton* (28 N. S. Rep. 492) approved and followed.

*Held*, further, that though the amending Act provided for forfeiture without prior formalities of a lease in case of non-payment of rent, such provision did not apply to leases existing when the Act was passed in cases where the holders executed the agreement to pay rent thereunder in lieu of work. The forfeiture of E.'s lease was, therefore, void for want of the formalities prescribed by the original Act.

**APPEAL** from a decision of the Supreme Court of Nova Scotia affirming the judgment at the trial in favour of the Crown.

The facts of the case and statutes governing it are sufficiently set out in the above head-note, and in the judgment of Mr. Justice Sedgewick.

*W. B. A. Ritchie* Q.C. and *Congdon* for the appellants referred to *Gilman v. Crowley* (1); *Attorney General v. The Ironmongers Co.* (2); and *Farnsworth v. Minnesota and Pacific Railroad Co.* (3).

*Russell* Q.C. and *Covert* for the respondents.

**THE CHIEF JUSTICE.**—I am of opinion, concurring in that respect in the judgment of Mr. Justice Townshend, that the words "date of the lease," in subsection c are to have their primary meaning, namely, the date of the instrument by which the demise or grant was made; this being so, the 10th of June is to be taken as the date referred to by the statute, and therefore the tender on the 9th of June, 1894, was a good tender in due time which prevented forfeiture.

For this reason the appeal should be dismissed, and the first judgment upheld.

(1) 7 Ir. C. L. 557.

(2) 2 Beav. 313.

(3) 92 U. S. R. 49.

GWYNNE J.—I concur in the judgment of Mr. Justice Sedgewick.

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SEDGEWICK J.—On the 21st of May, 1889, the relator, Robert D. Evans, applied to the Commissioner of Public Works and Mines for the province of Nova Scotia for a lease of twenty-six gold mining areas at Montague, county of Halifax. A lease in the form prescribed by chapter 7 of the Revised Statutes of Nova Scotia, 5th series, was subsequently drawn up and was executed by the Commissioner of Mines on the 10th day of June, on which day the instrument was dated. On June 1st, 1891, the instrument, called by all the parties a rental agreement, was executed between the lessee Evans and the Commissioner of Works and Mines purporting to be in pursuance of the statute which had been passed on the 17th of April, 1889. Under this instrument the lessee paid rent for three years. On May 22nd, 1894, the Commissioner of Mines declared the lease forfeited for non-payment of rent under the rental agreement, and on the same day issued a prospecting license to the appellant Temple, of the same areas. In July, 1894, the prospecting license was transferred to the appellant Annand, who in the following month obtained a lease from the mines office of a portion of the areas and subsequently sold it to the appellant Logan.

Previous to the passing of chapter 23 of the Acts of 1889, the administration of the mines of the province was governed by chapter 7 of the Revised Statutes, 5th series. When a person desired to obtain a lease of mining areas he applied to the Commissioner of Public Works and Mines therefor, paying at the same time the statutory price. In the event of there being no dispute as to the person entitled, a lease in the form prescribed by the statute was issued in the usual

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course. Neither the statute nor the lease required that any money should be paid by way of rental for the leased premises after the first payment, but the lessee, in order to prevent a forfeiture, was obliged to do a certain amount of work each year upon the areas leased. In the event of failure to perform this work, and to make due returns, the lease was liable to be forfeited, but the forfeiture could take place only after certain provisions by way of notice and investigation were complied with. There had to be at least 30 days notice of a hearing before the commissioner who was required to investigate and decide as to whether or not, as a matter of fact, the lease had been forfeited by reason of non-performance of work on the part of the lessee. The object of the amending Act of 1889 was mainly twofold. 1st. To give to the lessee the option of paying an annual rental for the areas leased instead of compelling him to do work upon the ground; and secondly, to enable the Commissioner of Mines to declare as forfeited without notice, preliminary proceedings, or an investigation of any kind, any areas in respect of which the annual rental had not been paid.

The lease in question was issued after the passing of this Act, but it did not contain these new provisions in regard to rental and forfeiture, section 7 having provided that "all leases of mines of gold and of gold and silver, and of mines other than mines of gold and gold and silver, shall contain the provisions respecting the payment of rental and its refund under certain conditions, as provided herein;" and section 8 providing that "the preceding section of this Act (section 7) shall come in force two months after the date of the passage of this Act." It is, I think, admitted by all parties that by reason of these two sections the lease in question herein must be₂ dealt

with as if it had been issued prior to the passing of the amending Act; and the principal question, although there are others, is as to the last subsection of section 1, which is as follows:

It shall be lawful for the owner of any leased area, by duplicate agreement in writing with the commissioner, to avail himself of the provisions of this Act so far as relates to the annual payment in advance and the refund thereof, and such advance payments shall be construed to commence from the nearest recurring anniversary of the date of the lease.

As I have said, on the 1st of June, 1891, the rental agreement was entered into by which it was provided that the lease in question should become subject to the provisions of section 1, of ch. 23 of the Acts of 1889, including the subsection just set out, the lessee agreeing to pay the annual rental of 50 cents per area payable as therein provided.

The action to set aside the lease under which the appellants claim as having been illegally and improvidently granted, was brought by the Attorney General upon the relation of the original lessee. At the trial, Mr. Justice Townshend, the trial judge, decided in favour of the Crown. Upon appeal this judgment was unanimously sustained. We are of opinion that the judgment of the court below should be affirmed, upon several grounds.

(1.) We are of opinion that the phrase "nearest recurring anniversary of the date of the lease" in subsection (c), is equivalent to the phrase "next, or next ensuing anniversary," as was unanimously held by the Supreme Court of Nova Scotia in the case of *The Attorney General v. Sheraton*, (1) and in our view the judgment of Mr. Justice Graham in that case is unanswerable, and it would be useless to repeat what

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(1) 28 N. S. Rep. 492.

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he has so well said in regard to the proper construction of that phrase. If that judgment be right then at the time of the declaration of the forfeiture on the 21st of May, 1894, no rent was due, there having been three payments of rent, the first on the 21st of May, 1891, which under the construction as above would be applicable as rent from the 21st of May, 1892, the next ensuing anniversary of the date of the lease, so that the declaration of forfeiture and the issue thereunder of licenses or leases by reason of such alleged forfeiture would be altogether invalid.

(2.) But there is, in my view, an equally strong reason why the alleged declaration of forfeiture was invalid. I do not think that subsection (c) imposes any additional burden in the matter of forfeiture upon a lessee who desires to avail himself of its benefits. It is clear under subsection (a) that in the case of a lease issued after the Act came into force forfeiture accrues without any further proceedings in the event of the annual rental not being paid, but it seems to me equally clear that that result does not happen in the case of then existing lease-holders who subsequently might enter into an agreement for the payment of an annual rental in order to escape the obligation of performing a specified amount of work upon the ground. Nowhere is it provided that in that case mere non-payment of the annual rental *ipso facto* works a forfeiture. It seems equally clear to me that the provision prescribed by the above Act in regard to forfeiture must in such a case be complied with. No such proceedings having been taken in this case the forfeiture is void.

(3.) There is yet another ground upon which, in my view, the judgment of the court below may be supported. I have above set out sections 7 and 8 of the amending Act. Section 1 of the Act had authorized a

change in the tenure on the part of lessees of mines. Section 7 had provided that these provisions should be especially incorporated in the leases subsequently issued, and then section 8 prescribes that that provision should not come into force for two months. Bearing in mind that we must give, where we possibly can, some meaning to every expression of legislative intent, and that it is only in case of absolute need where we are permitted to treat statutory expressions as absolutely meaningless, we must endeavour to give a meaning, if possible, to section 8. The appellants contend that section 1 of the Act took effect upon the passing of the Act, and that all leases issued within the two months shall have the same effect as if they contained in terms the provisions of subsection (a), (b) and (c). In other words, as to leases issued within the two months those not containing these provisions should have the same effect as if they had been issued after the two months with such provisions. If that is the proper construction of section 8, it is, so far as I can see, without meaning. I think it has a meaning. There were at the time, doubtless, numbers of unexecuted instruments in different parts of the country, some in England, others, many of them, in the United States, and the object of the legislature was, I think, to give a reasonable time for all of these inchoate instruments to be completed and brought back to the commissioner's office for registry, and the intent, although perhaps inartificially expressed, was to provide that the Act should not at all apply to these leases, two months being sufficient time to notify the world of the change in the law.

I do not think it necessary to discuss the question raised during the argument as to the date of the lease. In the view that we have taken it is not necessary to decide that point, nor to refer to the question inci-

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dental to it as to the rights of the Attorney General as the *dominus litis* of these proceedings.

In my view the judgment below should be affirmed with costs.

KING and GIROUARD JJ. concurred.

Sedgewick J.

Appeal dismissed with costs.

Solicitor for the appellant Temple : *Fred. T. Congdon.*

Solicitor for the appellant Annand : *Hector McInnes.*

Solicitor for the respondents : *W. H. Covert.*
