

WRITTEN OPINION OF C. SYDNEY HARRINGTON, Q. C.

The Editor Halifax Critic.

Sir,—I beg herewith to forward you my opinion as to the effect upon mining leases in the Province of Nova Scotia, of the provision by which the act of 1849 is to cease eighteen months after the demise of Her Present Majesty. That act recites:—

"Whereas Her Majesty's Most Gracious pleasure has been signified, that upon provision made for the civil list of this province by the Legislature thereof, all her Majesty's casual and territorial revenues shall be placed under the control and management of this Legislature."

It then makes provision for payment out of Provincial funds of the charges upon the Civil List, and then provides by Sec. 17 that the whole act together with the surrender of minerals therein referred to, shall terminate 18 months after the death of Her Present Majesty.

This latter provision has been continued in our Revised Statutes from its date to the present, in the act providing for the Casual and Territorial Revenues of the province so transferred to the province by the act of 1849.

It must not be overlooked that the foregoing act merely carries out the terms of a compact which was the result of lengthy negotiation between this province and the advisers of Her Majesty, who, up to that time, owned all minerals in her own right, and not in trust for the people.

That compact was, that in consideration of the province assuming the civil list of the province, which formerly had been paid by the crown, the foregoing "revenues" were transferred to the province.

The circumstance that the act in question shall terminate eighteen months after Her Majesty's death does not, in my opinion, detract from the permanence of the leases made since it went into effect. The provision for determination at the death of the sovereign of any transfer of purely personal rights is not only usual but probably invariable in all dealings of British parliaments with the reigning sovereign. This is done, not because the sovereign lacks power to make a transfer of his personal prerogatives binding upon his successors, but because it has been thought better for each new sovereign by his own act to transfer them. For such a course there are numerous precedents.

If it had been intended that the rights of the province in the properties surrendered should continue only during the life of the present Queen, the act would have said so and would have made them to cease at her death.

Instead of that, however, eighteen months are given for the obvious purpose of providing ample time for the Provincial Legislature to renew the present acts, binding on the new sovereign, as this is on the present one, and such legislation would receive the royal assent as a matter of course.

In my opinion, therefore, the act in question terminates when it does as a mere matter of form, and in compliance with the custom adopted in England when dealing with any personal rights of a reigning sovereign, and that all leases will continue for their full term.

I also think that any other reading, though it might be consistent with the letter of the act, is not in accord with its spirit, is at variance with the compact under which the act was passed, with the custom which fixed its form, and (regarding the circumstances under which it was passed) involves a breach of faith on the part of the crown not to be thought of, together with a renewal of the conflict of fifty years ago, which resulted in the surrender to the Queen of the lease made to the Duke of York. This lease was surrendered, not in order to re-vest the minerals of Nova Scotia in the Queen, but as a final step towards placing them under the control of this province forever.

All leases are in a statutory form, having the Royal assent like the other parts of the Statute, and are made for a time certain, which would not have been the form if it had ever been intended they should cease at Her Majesty's death.

I do not think Sec. 109 of the British North American Act affects the question. First, because that section does not mention the Crown, which is therefore not bound by it (a principle applying to all Acts of Parliament.) And secondly, because I read in the section itself words sufficient to show that it was not intended to create any new rights or displace any old ones.

Yours, etc.,

C. S. HARRINGTON.

Halifax, N. S., Feb. 1st, 1893.

OPINION OF INSPECTOR OF MINES.

Dr. Gilpin, the Inspector of Mines in Nova Scotia, has perhaps as much practical experience with mining titles as any man in the Province. We dropped in upon him and found that his views almost exactly corresponded with those expressed by Mr. Ross. His particular field is mining engineering and geology, and he disclaims all intention to pose as an authority on legal matters, but still he has carefully looked into the question of mining titles, and his opinion is undoubtedly of value.

OPINION OF LEWIS P. FAIRBANKS.

Meeting Lewis P. Fairbanks, Esq., of Dartmouth, in Wilson's store upon Hollis street, and knowing that he had first called Mr. Cahan's attention to the provisions of the Act of 1849, we decided to secure if possible his opinion on the question, and on broaching the subject to him, he with his usual courtesy gave the history of his connection with the matter and his own object in unearthing the Statute.

Perhaps no one outside of the legal profession and few in it are better posted in regard to land and mineral titles in Nova Scotia than Mr. Fairbanks. He purchased the rights in the Shubenacadie Canal, and ever since has been forced into numerous suits to protect his interests. He knows of every act, order in Council or other measure passed in relation to land and mineral titles in Nova Scotia, and has them all at his fingers' ends

when he wants them. We have space only to give a synopsis of Mr. Fairbank's remarks.

He acknowledged having called Mr. Cahan's attention to the Act, but stated that his object was not to question in any way the title to existing leases, which, having been made under acts duly assented to by Her Majesty through her duly appointed representatives, were as good as gold and not to be assailed on any grounds. He only desired to place in the hands of the leader of the Opposition an argument that might be used against the present coal bill and its long term of years, which Mr. Fairbanks honestly thought impolitic.

It was an argument that might be used to influence the Governor-General to disallow the Act, as Her Majesty might not care at her advanced age to deprive her successor of the right to intervene in the matter. Besides there was the possibility that Her Majesty might look on the present bill, with its fixed royalty for the long term, as the Act of a prodigal legislature bartering away its rights for present gain and taking no adequate thought of the morrow, and so be inclined to instruct her representative to disallow the Act. Mr. Cahan failed entirely to grasp Mr. Fairbanks' ideas, and, according to that gentleman, his contention was as absurd as was the Attorney-General's reply to it that the B. N. A. Act, which simply confirmed existing rights in the Province forever, settled in the Government of Nova Scotia the rights to the mines and minerals.

MR. B. F. PEARSON'S OPINION.

Mr. B. F. Pearson, Barrister, of Pearson, Forbes and Covert, has, as every one knows, been one of the moving spirits in the promotion of the sale of the Cape Breton coal mines to the Whitney syndicate.

Knowing that he would be thoroughly posted as to the effect of the act of 1849 on existing leases, we passed over to his office on the corner of Sackville and Granville streets, and were fortunate enough to find him in. At present Mr. Pearson is up to his eyes in business in connection with the coal legislation and the numerous enterprises in which he is engaged, and we contented ourselves with a brief interview.

Rapidly explaining the position taken by the other parties we had previously interviewed, we found that Mr. Pearson was in entire accord with them, and firmly of the opinion that there was nothing whatever in Mr. Cahan's contention. The act of 1849 had been called to his attention by Mr. Fairbanks over two months ago, had then been looked into by him, and passed over as not of sufficient importance for special attention.

He was convinced, however, that Mr. Cahan's utterances would find their way abroad and do great harm to the mining cause in Nova Scotia if not speedily contradicted, and he thought *The Critic* was taking a most commendable course in at once making public the overwhelming evidence at hand proving that lessees were in no way injuriously affected by the provisions of the Act of 1849.

The Coal Bill passed its third reading in the Legislative Council, was assented to by the Lieutenant-Governor, when Parliament adjourned until March 16th next.

Mr. Alfred Woodhouse of the Nova Scotia Gold Mines, Limited, and the Symon-Kaye Syndicate, of Montagu, who has been in London on business connected with his companies, left Liverpool for New York Jan. 25th last and is now due in Halifax. He will be welcomed by his hosts of friends.

MONTAGU.—The Nissen stamp mill on the Salisbury Company's property is now running and treating some surface stuff with good results.

Some very rich quartz has been struck in the Skerry lead of the Symon-Kaye property. Manager McQuarrie had some fine samples with him on his last visit to the city.

The work on the Annand mine of the Nova Scotia Gold Mines, Ltd., is being pushed ahead under the very capable management of Capt. Thomas.

COUNTRY HARBOR.—"A miner" in the *Herald* states that the pay streak on the property of the Country Harbor Mining Company was struck by simply sinking the shaft begun by Mr. McNaughton twenty five feet further in depth. When Mr. McNaughton ceased work, the shaft was 130 feet deep. We gave what we distinctly stated were two rumors in regard to the discovery, and Mr. Stuart was in no way responsible for the rumored report that the discovery was made in a new shaft sunk where he directed.

WAVERLEY.—Capt Geo Macduff, agent of the Crawford Gold Amalgamator, has a mill now running at Waverley, and is treating numerous samples of ores. Parties desiring to purchase gold-reducing machinery should visit Waverley and examine into the merits of the Crawford mill before investing. It has points of superiority over every other gold mill, and these the captain is always ready to demonstrate.

LAWRENCETON.—There is considerable talk of this district, which is about to be thoroughly prospected by very competent miners.

INTERNATIONAL MINING CONVENTION.—This convention, which is to be held under the auspices of the General Mining Association of Quebec during the week commencing Tuesday, 21st February next, promises to be the most important meeting of this description ever held.

Some twenty-three papers are being prepared by noted mining men and will be read at the convention, and several very important resolutions will be moved and discussed.

There should be a large attendance of mining men from this Province.