

Ex. Court.]

[Feb. 16.

ATTORNEY-GENERAL FOR MANITOBA v. ATTORNEY-GENERAL FOR CANADA.

*Crown lands—Settlement of Manitoba claims—Construction of statute—Title to lands—Operation of grant—Transfer in presenti—Condition precedent—Ascertainment and identification of swamp lands—Revenues and emblements—Constitutional law.*

The first section of the Act for the final settlement of the claims of the Province of Manitoba on the Dominion (48 & 49 Vict., c. 50) enacts that "all Crown Lands in Manitoba which may be shewn to the satisfaction of the Dominion Government to be swamp lands, shall be transferred to the province and enure wholly to its benefit and uses."

*Held*, affirming the judgment appealed from, (8 Ex. C.R. 337,) GIROUARD and KILLAM, JJ., dissenting, that the operation of the statutory conveyance in favour of the Province of Manitoba was suspended until such time or times as the lands in question were ascertained and identified as swamp lands and transferred as such by order of the Governor-General-in-Council, and that, in the meantime, the Government of Canada remained entitled to the administration thereof and that the revenues derived therefrom enured wholly to the benefit and use of the Dominion. Appeal dismissed with costs.

*Lewis*, for appellant. *Newcombe*, K.C., for respondent.

N.S.]

DRYSDALE v. DOMINION COAL CO.

[Feb. 16.

*Commissioner of Mines—Appeal from decision—Quashing appeal—Trial judgment—Estoppel—Mandamus.*

Where an appeal from a decision of the Commissioner of Mines for Nova Scotia on an application for a lease of mining land is quashed by the Supreme Court of the Province on the ground that it was not a decision from which an appeal could be asserted, the judgment of the Supreme Court is final and binding on the applicant and also on the commissioner even if he is not a party to it.

The quashing of the appeal would not, necessarily, be a determination that the decision was not appealable if the ground had not been stated.

In the present case the quashing of the appeal precluded the commissioner or his successor in office from afterwards claiming that the decision was appealable.

If the commissioner after such appeal is quashed refuses to decide again upon the application for a lease the applicant may compel him to do so by writ of mandamus.

Appeal dismissed with costs.

*W. B. A. Ritchie*, K.C., and *Mackay*, for appellant. *Lovett*, for respondent.