

is and they are hereby authorized and empowered, to sink, drill," etc. The fair meaning of these words is not to create a duty on the lessee to operate, but merely to confer upon him the right to do so, and therefore they in no way modify the nature of the alternative covenant above quoted, which is the only provision in the lease obliging the defendants, and then only in the alternative, to operate.

As to the last ground of complaint, namely, that the defendants have ceased for 6 months to operate under the lease: to cease implies a beginning: they never began, and therefore could not have ceased; and this ground fails.

The action is, therefore, dismissed with costs since payment into Court: up to that time the plaintiff to have his costs; the money in Court to be available to answer defendants' costs, and any balance to be paid to plaintiff.

DECEMBER 13TH, 1907.

C. A.

REX v. LEE GUEY.

Criminal Law—Keeping Disorderly House—Common Gaming House—Summary Trial—Jurisdiction of Police Magistrate—Right of Accused to Elect to be Tried by Higher Court—Provisions of Criminal Code.

Case stated by the police magistrate for the city of Hamilton. On 10th June, 1907, the defendants (three Chinamen) were brought before the magistrate upon a charge that they did at Hamilton unlawfully keep, maintain, and use a disorderly house, to wit, a common gaming house, by keeping for gain a certain house, or room known as 35 John street north, for playing therein at games of chance and mixed games of chance and skill, and in which a bank was kept by one or more of the players exclusive of the others, and were tried by the magistrate summarily, without their consent, and in opposition to their request to be tried by a Superior Court, and were convicted of the offence charged, and sentenced to pay a fine of \$100 each, which