

But in the view that the plaintiff did not clearly prove that the proper amount of reserve was not in fact stated to him, I concur in allowing the appeal.

MEREDITH, J.A., for reasons stated in writing, agreed in allowing the appeal.

MOSS, C.J.O., and MACLAREN, J.A., also concurred.

APRIL 1ST, 1911.

PETERSON LAKE SILVER COBALT MINING CO. v. NOVA
SCOTIA SILVER COBALT MINING CO.

Lease—Mutual Mistake in Description of Property—Rectification—Mining Companies—Lease of Part of Location by One to the Other—Common Officers of Companies—Agreement on Behalf of Companies—Validity, in Absence of Fraud—Strip of Land in Dispute—Intention to Include—Necessity of Written Document.

Appeal by the plaintiffs from the judgment of TEETZEL, J., of April 6th, 1910, 1 O.W.N. 619, after the trial of certain issues in the action. The facts are fully set out in the report cited.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

W. Nesbitt, K.C., and R. S. Robertson, for the plaintiffs.

I. F. Hellmuth, K.C., and Joseph Montgomery, for the defendants.

Moss, C.J.O.:—All issues of fraud or want of good faith have been eliminated from this case. So also for the present has the question whether, if the lease of the 25th of February, 1908, remains in its present form, there has been a trespass upon the plaintiffs' rights. And, as stated by Mr. Nesbitt in opening the appeal, the whole question for determination on this appeal is whether a triangular piece of land forming the north-west corner of lot 16, sec. G. in the township of Coleman was included, or intended to be included, in the lease.

The learned trial Judge has found that it was intended to be included, and has directed the lease to be rectified in accordance with his finding.