Mr. George Nisson, a mechanical engineer bearing the highest testimonials as to his ability as a mill-wright and amalgamator from leading mining companies in the United States, is now in Halifax, and will remain in the Province having been engaged to fit up crushing-mills.

SOUTH UNIACKE.—The Eastville Mine at South Uniacke, owned by Messrs Thompson and Quirk, continues its large yield, and on Tuesday Mr. James Thompson, one of the owners, brought to town a very fine specimen taken from the lead now being worked. It is pronounced by experts the best specimen yet taken from the mine, but when it is remembered that the yield of the lead is twelve ounces to the ton it is no wonder that rich samples are plentiful.

The Withrow Mine is in the same district, and Joseph Austen and others own valuable areas through which the rich leads now being worked extend.

MONTAGUE.—Great news comes from Montague, where another large nugget was struck in the Annand Mine on Tuesday night. It is hard to estimate the weight, but about 30 ounces fell off, and under the direction of Mr. Lucius Boyle, M E, the lode was being stripped to get out the balance, which shows a goodly mass of gold. It must be very encouraging to the management to find the mine doing so well. In fact it looks better to-day in every respect than it has since this day twelvemonth.

IMPORTANT JUDICIAL DECISION.

THE PALGRAVE GOLD MINING COMPANY, APPELLANTS, VS. MCMILLAN ET AL., RESPONDENTS.

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Palgrave Gold Mining Company vs. McMillan, from the Supreme Court of Nova Scotia, Delivered 23rd July, 1892.—Present: Lord Hobhouse, Lord Morris, Lord Hannen, Sir Richard Couch, Lord Shand.

(Delivered by Lord Hobhouse.)

The appellants hold a lease from the crown of certain gold mines, which extend over the whole of a small island situate in Isaac's Harbor, and called Hurricane Point. The respondent is the owner of a plot of land in the island. The question is as to the validity of an award made for the purpose of estimating the damages to be paid to the owners by the lessees under the provisions of the statute, chapter 7, of the revised statutes of Nova Scotia, fifth series.

The award embraced damages to be paid to other landowners besides the respondent, but its validity has been challenged by the respondent alone. For that purpose he applied in the supreme court for a writ of *certiorari*, and he also moved the court to quash the award. The appellants' counsel have urged objections to the propriety of that procedure. But it is clear that an invalid award may be set aside in some way or other by the supreme court; and it is not suggested but that the merits of this case were fully brought before the court Therefore, even if the appellants could show that the proceedings were informally started, their lordships would not on that ground be willing to reverse the judgment; and so they declined to hear the point argued.

It will be convenient to state the material provisions of the statute which governs the case.

(The court here cites sections 18, 19 and 20 of the statute, providing for arbitration when the owner of lands and the mining lessee cannot agree upon terms)

Section 26 provides for damages ensuing subsequent to the agreement or award, and section 44 gives protection to buildings and enclosures.

On the 23rd April, 1890, the appellants served a written notice on the respondent and 12 other persons, being all the landowners of Hurricane Point. After describing the ambit of the island, and referring to the crown lease and to the statute, the notice proceeded as follows:

(The notice is here cited)

It will be observed that the notice follows the terms of section 20 of the statute, except that there is no mention of the inspector of mines.

The respondent replied by a counter notice, stating that he "hereby objects to the said notice, to the arbitrator Hercules Howitt therein named as arbitrator on behalf of the said company, and to all or any proceedings which have been or may be instituted or carried on under the said act in pursuance of the notice, on the following among other grounds." He then set forth 14 grounds of objection, contending that Howitt was an improper person for arbitrator, and that the company were not in a position to take the steps they were taking.

Upon that the appellants made application to the warden of the municipality, who, after receiving the necessary affidavit, of his own authority appointed Hugh Hughes to be arbitrator on behalf of the landowners.

On the 17th May the arbitrators caused a written notice to be served on the respondent and the 12 other landowners, summoning them to meet for the purpose of estimating and awarding damages. (The notice is omitted.)

On the same day, after service on the respondent, Hughes exhibited to him his authority to act as arbitrator, whereupon the respondent forbade him to enter the island, and said that he would not get there, and if he had attempted to do so he would have been prevented.

Nevertheless, on the 19th the two arbitrators, accompanied by Mr. Fisher on behalf of the company, took a boat and rowed over to the island. When they neared the land they were met by the respondent and 12 other men, some of whom were armed with guns and pistols, and who threatened the party with death if they attempted to land. The arbitrators rowed twice round the island, seeking a spot to put in at, but the respondent and his men met them everywhere with the same threats. Even when they tried to land upon a wharf below highwater mark belonging to the company, the 13 men came to the front of the wharf and threatened to shoot if the boat came closer.

Thus prevented from conducting the arbitration on the land which was the subject of it, the arbitrators proceeded as best they could. One of them is thoroughly acquainted with the island. The other says that he was able by rowing round the island to get a fair view of it, and to judge of its value, and to estimate the damages. The whole island is only 44 acres in extent. Mr. Fisher describes it as follows:

"The land is of a flat surface and very narrow, in places not over 60 feet, and can be seen nearly as well from the water as when on its surface, and its value judged of also. It is a piece of land very rocky and barren, and, with the exception of two or three small spots, is unfit for cultivation, and is of very little value except in connection with the gold mining areas owned by the said company."

The arbitrators substantially agree in that description, nor is there any contradiction of it.

The award is dated the 19th May, and directs that $50, divided into ten equal parts, be paid to the claimants.

The grounds submitted to the supreme court for invalidating the award are stated by Mr. Justice Weatherbe as follows:

"1. The award was bad for uncertainty. The award does not show for what part of the lands the arbitrators have given damages. That the award should define the number and position of shafts, buildings, and everything else, including damages likely to occur to streams of water, etc.

2. The award is bad for awarding damages in a round sum.

3. The arbitrator was an employe of the company.

4. There was no notice of the application to the warden to appoint an arbitrator.

5. There was no notice of the appointment of arbitrator.

After hearing Mr. Ross we considered it unnecessary to call on Mr. Wallace for the company on the several grounds referred to, except as (1) to the uncertainty of the award; (2) want of notice of application to the warden.

Their lordships state this matter in detail, because an additional ground is now taken and has been earnestly urged at the bar. The respondent says that the appeal should be dismissed, because the award is invalid for three reasons, stated in his notice of motion, though not urged before the court. They are as follows:

18. Because the said arbitrators did not enter upon the lands or view the same before making the said award.

19. Because there was no evidence before the arbitrators upon which any award could be made.

20. Because the said John McMillan received no sufficient notice of any meeting of the said arbitrators, and had no opportunity to call and examine witnesses, or give evidence before the arbitrators

These grounds were abandoned in court, and it is very easy to understand why. It is a very bold thing for one whose lawless violence has been the sole cause of preventing the ordinary and regular course of proceedings, to come forward and complain of injury because the proceedings have not been ordinary and regular. Courts of justice are not in the habit of listening to such complaints In fact their lordships, on the materials before them, are of opinion that the arbitrators were quite justified in the course they took. They were forcibly prevented from entering on the lands; they were entitled to act on their knowledge and observation of the ground; the respondent, and indeed all the other owners, had received sufficient notice of their intended meeting; and it is trifling with the case to suggest that any further notice would have been of any avail to people who had met the two former notices with defiance and menace. But even if the respondent's case could be made to wear a more favorable aspect, their lordships would not think it right to entertain objections to the award which must have been deliberately abandoned in the court below, and which, if urged then, and if thought of importance, might have been the object of further inquiry and explanation.

As for the two objections which were urged and were not at once overruled, Mr. Justice Weatherbe thought them insufficient, but the rest of the court, Mr. Justice Townshend and Mr Justice Meagher, were of a different opinion. They considered that the warden's appointment of an arbitrator was invalid for want of notice to the parties, and also that the award is void for uncertainty. An order thereupon was made on the 10th July, 1891, having the effect of quashing the award, of dismissing a motion of appeal brought by the appellants to quash the *certiorari*, and of throwing upon them the whole costs of the proceedings. That is the order now appealed from.

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