MINERALS WRONGFULLY TAKEN—COMPENSATION—INTEREST—DECREE FOR ACCOUNT—CLAIM FOR INTEREST MADE ON FURTHER CONSIDERATION.

Phillips v. *Homfray* (1892), 1 Ch. 465, was an action commenced in 1870, wherein a decree was pronounced declaring the defendants answerable to the plaintiffs for all minerals got and removed from under the plaintiff's farm, and an inquiry was directed as to what minerals had been got and removed, and it was ordered that the value, at the pit's mouth, of all minerals so got or removed, with just allowances for carriage, but none for getting, should be certified. The decree was silent as to interest, no claim for interest being made at the hearing. The referee reported the value of the minerals so got, at the pit's mouth, to be £9028. Upon the further consideration of the action in 1891 the plaintiffs claimed to be entitled to interest on that amount, on the ground that the action was in the nature of an action of trover, or trespass *de bonis asportatis*, within 3 & 4 W. 4, c. 42, s. 29. But the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.) held that the action must be treated as an equitable action to recover the benefits the defendants had received from the wrongful taking of the minerals in question, and that although the plaintiffs would, if they had claimed it at the original hearing of the cause, have been entitled to interest, yet as they had not in fact then claimed it they were too late in claiming it for the first time twenty years after the date of the original decree, and they affirmed the decision of Stirling, J., refusing the interest. Under the more elastic provisions of the Ontario Consolidated Rules the interest in such a case would probably be allowed by the master as a matter of course, without any special direction in the judgment, or any special claim being made for it at the hearing or trial of the action. See Con. Rule 56.

DEED—CONSTRUCTION—RESERVATION OF RIGHT TO GET MINERALS—RIGHT, WHETHER EXCLUSIVE—SETTING ASIDE LEASE.

Duke of Sutherland v. *Heathcote* (1892), 1 Ch. 475, is a decision of the Court of Appeal (Lindley, Bowen, and Fry, L.JJ.), affirming the judgment of Williams, J. (1891), 3 Ch. 504, noted *ante* p. 105. There were two points in the case: First, as to the effect of a reservation of the right to get coal and minerals in favour of the donees of a power of sale contained in a conveyance made by the donees in execution of their power. The Court of Appeal agreed with Williams, J., that it operated as a grant to the donees of the power, of the right to work minerals, but that it was not an exclusive right; that is to say, the grantees of the land were not by such reservation excluded from the right also to get coal and minerals. In other words, that the reservation of the right could not be construed as an exception of the minerals. The other point was that the plaintiff, in ignorance of this reservation, to the benefit of which he had become entitled, had accepted a lease from the grantees of the land, and it was claimed by the plaintiff that as this lease had been accepted by him in mistake and ignorance of his rights under the reservation it should be set aside, but inasmuch as the plaintiff was not prepared to give up possession of the property comprised in the lease, and as the mistake was not common to both parties, the court held that it could not be rectified or set aside.