On the 1st June, 1889, the relator entered into an agreement with the Commissioner of Mines for the purpose of taking advantage of this provision.

By the Acts of 1893, c. 2, s. 2, sub-sec. *a*, after making provision for payment of rental in advance, by the lessee, on or before the expiration of the first year of the lease, and, in the same manner, for the remaining number of years that the lease had to run, it was enacted that, in case any such annual payment in advance should not be made, notice of such default should forthwith be sent by the Commissioner, by registered letter, mailed to the post office address of the lessee or lessess, and, if the rent was not paid within 30 days after the posting of such notice, the lease should become forfeited at the expiration of said period of 30 days, and applications for the areas declared forfeited might be made at the Mines Office at 10 o'clock of the morning of the next day.

By s. 10 of the same Act it was enacted that the Commissioner should not be required to send notice of default of payment unless, previously to such default, the lessee should have given written notice to the Commissioner of his post office address.

The evidence in the present case showed that the name and address of the relator were registered in the Mines Office, and that he paid rent under the agreement on June 1st, 1891, April 26th, 1892, and May 17th, 1893.

On May 22nd, 1894, the Commissioner of Mines, treating the lease as forfeited for non-payment of rental, granted a prospecting license to the defendant T.

On June 9th, 1894, the relator tendered to the Commissioner the rental in advance for the year 1894-1895, claiming that the current year of his lease had not at that time expired.

Held, following the *Attorney-General* v. *Sheraton*, 28 N.S., that the rental was not in arrears at the time of the forfeiture, the statute applying the payment of rental to the year next ensuing after the date of the rental agreement, and not to the current year, and there being therefore a payment in the hands of the Commissioner irrespective of the amount tendered for the year as to which the lessee was supposed to be in default.

Per GRAHAM, Eq. J.—1. That under a proper construction of the rental clause there was not to be an ipso facto forfeiture of the lease, on non-payment of rent, but, under the provision of the Acts of 1892, c. 1, ss. 66-69, there should have been a proceeding and judgment of forfeiture.

2. That the case was distinguishable from *Attorney-General* v. *Sheraton*, by reason of the provisions of the Acts of 1890, c. 19, s. 2 (Con. Acts of 1892, c. 18, sub-sec. *c*.), whereby so long as the rent was paid in advance the areas were not subject to forfeiture for non-working.

3. Distinguishing sub-secs. *a* and *c* (Acts of 1889, c. 23, s. 1), that it was not to be assumed, because the legislature provided for forfeiture without proceedings in the case of future leases (sub-sec. *a*), that they intended there should be forfeiture without proceedings in the case of leases already in existence, and as to which rental agreements had been entered into (sub-sec. *c*).

4. That, as leases granted under sub-sec. *c*, contained a clause providing for forfeiture in case the required work was not performed, they must be dealt