

**The Coal Royalty Legislation in Nova Scotia—  
Full Report of the Mining Society's Plea for  
its Repeal before the Committee of the  
Legislative Council—A Strong  
Argument Presented.**

*To the Hon. Malachy Bowes Daly, Lieutenant-Governor  
of Nova Scotia:—*

The petition of the undersigned lessees of coal mines in the Province of Nova Scotia, humbly sheweth: That there has passed the House of Assembly and the Legislative Council, during the present session of the Legislature of the Province of Nova Scotia, an Act entitled "An Act to amend and consolidate the Acts relating to mines and minerals."

The 116th, 117th and 122nd sections of the said Act are respectively as follows:—

"116. All ores and minerals (other than gold or gold and silver) mined, wrought, or gotten under authority of licenses or leases granted under the provisions of said chapter 7 of the revised statutes, fifth series, or of any Act heretofore passed by the Legislature of this province, shall be subject to the following royalties to the Crown for the use of the province, that is to say:—

"117. Coal.—Ten cents on every ton of two thousand two hundred and forty pounds of coal sold or removed from the mine, or used in the manufacture of coke or other form of manufactured fuel."

"122. All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished or otherwise changed by the Legislature."

There has also passed the House of Assembly and the Legislative Council during the said present session, an Act entitled "An Act respecting the royalties on coal."

The first section of the last mentioned Act is as follows:—

"1. The royalty of ten cents per ton on coal as fixed by the said section shall be held to have taken effect on the 23rd day of February, 1892."

The present rate of royalty on coal is seven and one half cents per ton on all coal including so-called slack coal, or in some cases nine and seven-tenths on round coal, such rates being optional on the part of the lessees and mutually regarded and treated as equivalent.

The first mentioned proposed Act provides in the 116th and 117th sections for an increase in the royalty to be paid by your petitioners and all corporations or persons operating coal mines under existing leases, amounting to 33 1/3 per cent.

The other proposed Act provides for the increased royalty being exacted retroactively, and it is submitted, is therefore specially objectionable independently of the grounds of objection to the main Act.

The previous legislation bearing on the proposed Acts is as follows:—Section 1, chapter 9 of the Acts of 1866 is as follows:—

"I. Lessees of coal mines in this province, their executors, administrators and assigns, holding leases from the Crown, or from the chief commissioner of mines, made since the first day of January, A.D. 1853, or hereafter to be made, shall upon giving notice in writing to the chief commissioner of mines at least six months previous to the expiration of such leases, respectively, of their intention to renew such leases respectively for a further period of twenty years from the expiration thereof, be entitled to a renewal thereof for such extended term upon the same terms, conditions and covenants as contained in the original lease, and in like manner upon giving a like notice before the expiration of such renewed term to a second renewal and extension of term of twenty years, from and after the expiration of such renewed term, and in like manner upon giving like notice before the expiration of such second renewed term to a third renewal and extension of twenty years, from and after the expiration of such second renewed term; provided that at the time of giving such notices, and the expiration of such term, respectively, the said lessees, their executors, administrators and assigns, are, and shall continue to be *bona fide* working the areas comprised within their respective leases, and complying with the terms, covenants and stipulations in their respective leases contained, within the true intent and meaning of Section 104 of the Act hereby amended, and provided that in no case shall such renewal or renewals extend, or be construed to extend, to a period beyond 60 years, from the 25th day of August, A.D. 1856, and provided also that the Legislature shall be at liberty to revise and alter the royalty imposed under such lease in or after the year 1886.

Section 103, chapter 9, of the revised statutes, fourth series (1875), is identical with the above section of the Acts of 1866, except that it does not contain the concluding proviso, that is to say the words:—

"And provided, also, that the Legislature shall be at liberty to revise and alter the royalty imposed under such lease in or after the year 1886."

No such provision as this latter is contained in any part of the Consolidated Acts of 1873.

Section 105, of chapter 7, of the revised statutes, fifth series (1884) is as follows:—

"105. The General Mining Association (limited), and other lessees of mines, other than gold and silver mines, in this province, their executors, administrators and assigns shall, upon giving notice in writing, to the commissioner of mines, at least six months previous to the expiration of their leases, respectively, for a

further period of twenty years from the expiration thereof, be entitled to a renewal thereof for such extended term upon the same terms, conditions, and covenants as contained in the original lease, or as prescribed by this chapter, or by any Act that may be passed by the Legislature of this Province, and in like manner upon giving a like notice before the expiration of such renewed term, to a second renewal and extension of term of twenty years from and after the expiration of such renewed term, and in like manner upon giving like notice before the expiration of such second renewed term, to a third renewal and extension of twenty years, from and after the expiration of such second renewed term, provided that at the time of giving such notices, and the expiration of such term, respectively, the said lessees, their executors, administrators and assigns, are, and shall continue to be *bona fide* working the areas comprised within their respective leases and complying with the terms, covenants and stipulations in their respective leases contained within the true intent and meaning of section 107 of this chapter; and provided that in no case shall such renewal or renewals extend, or be construed to extend, to a period beyond eighty years from the date of the original lease, but the renewed lease shall not include in respect of each mine worked, a larger area than five square miles."

"(c) In the case of leases that are eligible for renewal, in which the conditions of renewal embodied therein are different from those prescribed by this chapter, and the lessees thereof are unwilling to have such conditions altered, the commissioner shall have power to renew said leases on the terms contained therein and as prescribed by chapter 9, Revised Statutes, fourth series, and no other."

Section 4 of chapter 4 of the Act of 1885, is as follows:—

"4. All leases of coal mines issued after the passing of this Act shall contain a provision that the royalties may be increased, diminished, or otherwise changed by the Legislature."

All leases in existence previous to the 25th day of August, 1856, expired on that date and were, with leases afterwards issued from that time, renewable according to the terms of the Acts above set out, and the terms of the leases themselves on the corresponding dates in the years 1906, 1926 and 1946.

Your petitioners submit that the re-enactment in the Revised Statutes of 1873 of section 1 of the Act of 1866, without the proviso under which the Legislature was to "be at liberty to revise and alter the royalty in or after the year 1886," conferred upon all the holders of then existing coal leases, and upon all subsequent holders of coal leases up to the year 1884, when the revised statutes, fifth series, were promulgated, an absolute legal right to renewals of their leases up to the year 1946, without any increase in rent or royalty.

As to section 105, of chapter 7, of the revised statutes, fifth series, above set out, your petitioners are advised, and they submit that in construing the portion of this section which provides that lessees

"shall be entitled to a renewal upon the same terms, conditions and covenants as contained in the original lease, or as prescribed by this chapter, or by any Act that may be passed by the Legislature of this province," it must be assumed either that it was not the intention of the Legislature to provide for future legislation legalizing the imposition of an increased rent, in violation of a lease defining what that rent should be, or on the other hand if the language used as to the terms of renewal be considered broad enough to cover the matter of an increase of rent, then it is submitted that the Act itself was improper, and that the Legislature which proposes to legalize a specific increase of royalty in violation of existing contract rights, should not receive your honour's assent.

Further, as to this last mentioned section, your petitioners submit that even if, on its proper construction it would include a right on the part of the Legislature to increase the royalty payable under then existing leases, such increase could be stipulated for only at the time of the renewal in the year 1886, of the leases respectively, all of which were to expire, and did expire in that year, so that the renewal being once made, the royalty could not legally be increased until the next following renewal date.

As to section 9 of chapter 4 of the Acts of 1885 above set out, your petitioners are advised, and they submit that upon its true construction, it relates only to leases to be issued subsequently to its passing, and that it does not relate to agreements merely expressing the rights of the parties by virtue of leases previously issued.

Your petitioners submit that there is clearly no legal ground for giving to the Legislature an *ex post facto* operation, seeing that there is ample office for the words to perform in connection with original leases to be issued after the passing of the Act.

For the reasons above indicated, your petitioners submit that the proposed legislation in a most substantial and serious manner invades the vested rights of your petitioners, secured to them by contracts solemnly entered into, on the faith of which they have invested very large sums as capital in the various coal mining districts of this province.

By far the greater portion of such capital has been invested by persons residing outside of this province, and they, as well as others residing in Nova Scotia, would direct your attention to the breach of their contract rights which the proposed Acts involve above set forth,

and your petitioners humbly pray your honour to withhold your consent to the said Acts.

And your petitioners as in duty bound will ever pray, etc.

(Signed) THE MINING SOCIETY OF NOVA SCOTIA,  
H. S. POOLE, PRESIDENT.

" THE GENERAL MINING ASSOCIATION.

" THE ACADIA COAL COMPANY (LIMITED.)

" THE INTERNATIONAL COAL COMPANY

(LIMITED.)

" THE CALEDONIA COAL AND RAILWAY COM-

PANY (LIMITED.)

" THE GLACE BAY COAL MINING COMPANY

(LIMITED.)

" THE GOWRIE COAL COMPANY (LIMITED.)

" THE CUMBERLAND COAL AND RAILWAY COM-

PANY (LIMITED.)

" THE INTERCOLONIAL COAL MINING COM-

PANY (LIMITED.)

" THE LOW POINT, BARRASIS AND LINGAN

COMPANY (LIMITED.)

MR. HENRY, Q.C.—Mr. Chairman and Gentlemen,—I appear before your committee as counsel for a number of corporations who have invested capital in the development of the coal mining industry of the province, and who are actively engaged in that interest at the present time, as well as for a number of persons who are interested in areas which are now now being worked. The questions involved in this enquiry divide themselves into two aspects: First as to the actual rights of persons who have invested large amounts of money on the faith of the existing law of the Province in relation to this matter; second, in respect to persons who are seeking to bring about the investment of further capital. These two classes are manifestly similarly and diversely interested. The question may be regarded as almost exclusively a moral one; it is a question not so much of power as of propriety; it is a question not so much of what the legislature may enact, as of what it ought to enact or abstain from enacting. I am limited to a very short time to discuss a large and broad-reaching question, a question affecting not only the interests, but the honor of the country, inasmuch as it affects the opinion that will be held abroad of the permanence of the rights of parties investing capital within the territorial limits of the Province. To confine myself within the short space of time allotted to me, I must circumscribe a great deal of matter which otherwise might properly be written. I begin, then, by calling the attention of the committee to the fact that in 1873 there arose or came into existence a certain important right on the part of every holder of a lease of coal mining areas in the Province of Nova Scotia, namely, the right expressed in the 102nd section of chapter 9 of the Consolidated Statutes of 1873. That right was expressed in the following words, which I will read:—

"Lessees of coal mines in this Province, their executors, administrators, and assigns, holding leases from the Crown, or from the Commissioner of Mines, made since the first day of January, A.D., 1856, or hereafter to be made, shall upon giving notice in writing to the Commissioner of Mines, at least six months previous to the expiration of such leases, respectively, of their intention to renew such leases, respectively, for a further period of twenty years, from the expiration thereof, be entitled to a renewal thereof for such extended term upon the same terms, conditions and covenants as contained in the original lease, and in like manner upon giving a like notice, before the expiration of such renewed term, to a second renewal and extension of term of twenty years, from and after the expiration of such renewed term, and in like manner, upon giving like notice before the expiration of such second renewed term to a third renewal and extension of twenty years from and after the expiration of such second renewed term; provided that at the time of giving such notices, and the expiration of such terms respectively, the said lessees, their executors, administrators, and assigns, are and shall continue to be *bona fide* working the areas comprised within their respective leases, and complying with the terms, covenants and stipulations in their respective leases contained, within the true intent and meaning of section 109 of this chapter; and provided that in no case shall such renewal or renewals extend, or be construed to extend, to a period beyond sixty years from the 25th day of August, A.D., 1856."

Now that comprises the whole of the legislative expression of the rights of the parties, under coal leases, from the day that law was promulgated. Speaking generally, it may be said that that section defined the rights of coal lessees in the Province down to the present time, for, though in 1885 another Act was passed, it is submitted with every confidence that the Act of 1885, providing for the rights on the part of the legislature to increase or diminish the royalties from time to time payable by the coal lessees, must be restricted in its operation to rights arising for the first time between the Crown and lessees after the passage of that Act. From 1873, down to the present time, every individual and every corporation interested in, or holding coal areas under the law of Nova Scotia, had a right to believe, and had a right to act upon the belief, that they had an inalienable right to ask for an extension of time in compliance with the terms in section 102 of the legislature, and observing the terms of the then existing law. Neither the Act of 1885 nor the Consolidated Statutes of 1884, which modify the rights of lessees at that time, upon a true construction, amount to a giving to the