

the lot, and began to mine, and did a considerable amount of development work.

Clement sold and conveyed the land to the defendant by deed dated the 8th March, 1902, subject to reservations, limitations, provisoes, and conditions expressed in the original grant thereof from the Crown, and his wife, Annie Clement, joined in the deed as a party of the second part and barred her dower in the said lands. Negotiations for this sale had been taken place some time previous to the execution of the deed. It was not contended that the defendant did not know of the earlier agreement with the plaintiff or that the plaintiff had entered under it and expended money.

By 8 Edw. VII. ch. 17, sec. 4, sub-sec. 3, it is provided that: "All reservations of mines, ores or minerals contained in any patent heretofore issued for lands patented under the said Act, where such mines, ores or minerals are the property of the Crown and have not been staked out, recorded, leased or granted under the Mining Act of Ontario, or any statute or regulation previously in force, are hereby rescinded and made void, and all mines, ores and minerals in such lands shall be deemed to have passed with the said lands to the subsequent and present owners thereof."

The trial Judge took the view that the case turned upon the construction to be placed on this clause of the statute, and proceeded: "In my opinion, it is consistent with the language, and is best calculated to effect its obvious purpose, to read it not as a present conveyance or release of the mineral right to the person who at that time had acquired the title conferred by the patent, but as a withdrawal ab initio of the reservation and a confirmation of the title of the original patentee and of all persons claiming under him, as if no such reservation had been made. Such a construction seems to me to work out justice and to be entirely consistent with the language of the statute."

By R. S. O. 1897, ch. 29, sec. 20 (corresponding to R. S. O. 1887 ch. 25, sec. 17), "No alienation . . . of the land, or of any right or interest therein, by the locatee after the issue of the patent, and within twenty years from the date of the location, and during the lifetime of the wife, shall be valid or of any effect, unless the same be by deed in which the wife of the locatee is one of the grantors with her husband, nor unless such deed is duly executed by her."

This section was not brought to the attention of the trial Judge. The wife, who is still living, did not join in the agreement to the plaintiff, and that agreement was void and of no