

Province of Nova Scotia.

SUPREME COURT.

Full Court.]

[Dec. 19, 1896.

ATTORNEY-GENERAL EX REL. EVANS v. TEMPLE.

*Mines and Minerals Acts—R.S. (5th series) c. 7, Acts of 1889, c. 23 : Acts of 1890, c. 19; Acts of 1892, c. 1; Acts of 1893, c. 2—Conditions of lease—Payment of rental in advance—Application of payments by statute—Forfeiture—Necessity for proceedings and judgment—Distinction between leases issued and to be issued under Acts of 1889, c. 23, s. 1, sub-secs. a, c—Necessity for notice of forfeiture proceedings—Words "preceding section" held to extend to all preceding sections on same subject matter—Registry book—Evidence necessary to overcome—Relevant proof—Words of receipts rejected in favor of construction placed upon words of Act—Falsa demonstratio—Grounds not open to defence—Principle as to forfeiture applicable to private rights under contracts, etc., not applicable to rights under statute.*

The relator, E., was lessee, under a lease dated June 10th, 1889, of certain gold mine areas in Montague district, for the term of 21 years, to commence from the 21st day of May, 1889.

Prior to June, 1889, the mining law of the Province of Nova Scotia, (R.S. 5th series, c. 7, s. 29) required the leaseholder, every year, to perform a certain number of days' work, according to the number of areas held by him, in default of which the lease was liable to forfeiture on proceedings to be taken by the Commissioner of Mines, after notice to the lessee.

On the 17th June, 1889, certain sections of an Act passed April 17th, 1889, (Acts of 1889, c. 23, ss. 1-7) came into force under which (s. 1, sub-sec. a) leaseholders were enabled on or before the expiration of the first year of the lease to pay in advance to the Commissioner the sum of 50c. for each area, and thereafter to make the same payment annually in advance for the remaining number of years that the lease was outstanding. In default of any such annual payment in advance, the lease was declared to be forfeited at the expiration of the year for which the last annual payment was made, and applications for licenses or leases for the areas declared forfeited might be made at the Mines Office at 10 o'clock on the morning of the following day.

In respect to leases already issued it was provided (s. 1, sub-sec. c) that the owner of any lease by duplicate agreement in writing with the Commissioner might avail himself of the provisions of the Act with respect to annual payments in advance, such advance payments to be construed to commence from the nearest recurring anniversary of the date of the lease.

Under the form of agreement the leaseholder covenanted to pay the annual rental in accordance with the terms and provisions of the Acts of 1889, c. 23, and, on the part of the Commissioner, it was covenanted that, so long as the payments were so made, the lease should not be set aside or forfeited for non-working.