DIVISIONAL COURT.   JULY 6TH, 1910.

AUSTIN v. RILEY.

*Free Grants and Homesteads Act—Crown Grant—Reservation of
Mines and Minerals—Sale by Patentee of 'Mineral Rights—8
Edw. VII. ch. 17, sec. 4, sub-sec. 3—Cancellation of Reserva-
tion—Construction—R. S. O. 1897 ch. 29, sec. 20—Wife of
Patentee not Joining in Conveyance of Mineral Rights—Sub-
sequent Conveyance of Land with Bar of Dower—Defendant
Succeeding on Ground not Urged at Trial—Costs.*

Appeal by the defendant from the judgment of GARROW, J.A.,
at the trial, in favour of the plaintiff, in an action for a declara-
tion that he was the owner of all the mineral rights in lot 34 in
the 17th concession of the township of Monmouth, and for an in-
junction restraining the defendant from interfering with the
plaintiff in his use of the lot.

The appeal was heard by MULOCK, C.J.Ex.D., MACLAREN, J.A.,
and CLUTE, J.

R. J. McLaughlin, K.C., for the defendant.

A. J. Russell Snow, K.C., for the plaintiff.

The judgment of the Court was delivered by CLUTE, J.:—The
facts (which are not in dispute) are as follows:—

On the 17th November, 1886, one Martin Clement (described
as a "free grant settler") obtained a patent from the Crown of
lot 34 in the 17th concession of the township of Monmouth, in
the provisional county of Haliburton, under the Free Grants and
Homesteads Act, reserving all mines and minerals to the Crown.

On the 24th August, 1899, Clement, in consideration of $1,
executed an instrument in favour of the plaintiff, called a mining
lease and option, whereby he "agreed to allow" the plaintiff to
enter upon the said lot and mine for gold and all other metals for
the term of twenty-two days from the date thereof, "provided
the lessee may purchase the entire mineral right of the lands and
premises, with all mines, &c., for $100"—covenant "to convey
by a good and sufficient deed and clear from all incumbrances
in case of purchase of the said mineral right, &c." The agree-
ment to bind heirs and representatives. Shortly after the agree-
ment was executed, the plaintiff paid the $100, entered upon