

*Held*, reversing the decision of MORRISON, J., that the master of the tug was negligent in not stopping and then making certain that it was safe to proceed.

Lucas, for plaintiff, appellant. J. A. Russell, for respondent.

Full Court.]

HAPLIN v. FOWLER.

[Jan. 21.

*Mining law—County Court—Jurisdiction—Working agreement, or lease—Use of timber on claim—Ore-bins and tramway.*

Defendant by an agreement under seal, purported to lease to plaintiff a portion of a quartz mine, the plaintiff covenanting inter alia to open and maintain in good repair 100 feet of No. 6 level from the mouth inwards, to remove all broken ore and to sort out and preserve for shipment such material as could be profitably sorted, to place all concentrating ore on the dump as directed by defendant, to work the demised area in a good and miner-like manner to the satisfaction of the defendant and to insure by means of timbering, etc., as required by defendant, the safety of the workings and their permanency. Defendant was to receive the returns from all ore shipped, first making certain deductions, to keep certain percentages from the amounts received, and pay the balance to plaintiff.

*Held*, that these provisions constituted a contract merely to win the ore for a sliding percentage of the returns.

Plaintiff claimed damages for being prevented by defendant from using the timber on the claim in his operations under the agreement, for tearing up and removing the ore track and trestle which were alleged to be the only means for working the ore, and also for preventing plaintiff from using certain ore-bins and a track in connection with same at the mouth of the level.

*Held*, that as the agreement was silent concerning the use of the timber, track, trestle and ore-bins, it should have been left to the jury to find whether there was a distinct collateral agreement concerning these matters, and if so, what it was.

New trial ordered, MARTIN, J., dissentiente.

W. A. Macdonald, K.C., for appellant. Davis, K.C., for respondent.