LEGAL NOTES.

[This department will appear in the third issue of every month. Should there be any particular case you wish reported we would be pleased to give it special attention, providing it is a case that will be of special interest to engineers or contractors.—Ed.]

MINING LEASE—FORFEITURE ON BREACH OF COVENANTS—LESSEE ENTITLED TO INQUIRY—OPINION OF EXPERT.

Bonanza Creek Hydraulic Concession vs. Attorney-General of Canada.

On 3rd November, 1899, the plaintiff company took a lease from the Government of certain claims in the Yukon Territory. This lease stipulated that machinery should be in place and operations commenced within one year of date: further that "if during any year the lessee failed to expend upon mining operations the sum of $5,000—of the fact of which failure the Minister and the Interior should be the sole and final judge—the lease and all rights and privileges thereunder should become absolutely null and void" and the Government might resume possession. It was further provided by the mining regulations in force at the time, that in case of breach of any covenant, the Gold Commissioner might placard a notice upon the location—also mail a copy to the last known address of the lessee and if the breach was not remedied in three months the lease should ipso facto become null and void.

The company it was alleged did not live up to the agreement in the lease and did not expend the $5,000 per year, whereupon the Minister, without notice to the lessees decided that they were in default and declared their rights forfeited.

The Supreme Court of Canada holds that this is beyond the Minister's power. They say that the provision that he shall be "sole and final judge" as to whether default has taken place is merely a stipulation that reference shall not be taken to any third party or court, that while he is the sole judge as to whether default has been made that question must be decided in the affirmative prior to declaring the lease forfeited, and that in giving such decision he is not an arbiter but a judge, and is bound to give a hearing to both parties. As no such opportunity was afforded to all parties of hearing what was alleged against them, the lease is not validly cancelled, but still exists and the mining company can still hold the claim. 40 S.C.R. 281.

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This is similar to the case of Armstrong and South London Tramway Company. The plaintiff engaged as conductor under an agreement that any breach of the company's rules should render him liable to dismissal, together with forfeiture of any wages already earned but unpaid—and that the certificate of the manager as to whether breach had in fact occurred should be conclusive evidence in any court. The manager, without hearing the plaintiff certified there had been such breach, but the court held that the certificate was ineffectual, saying: "A party cannot be deprived of wages already earned without a hearing. It is a necessary implication that the party should be heard, and it would be monstrous to suppose otherwise." 7, Times L.R. 123.

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The court notes a distinction between a right of decision such as possessed by the Minister of the Interior in the case above and that of experts. Where a question is referred to an expert he depends solely and primarily upon his own judgment and experience—employs his own eyes, knowledge and skill and gives his decision accordingly. Thus, if the agreement had referred the question of expenditure to the Minister as being an expert mining engineer and stipulated as it does that he should "be sole and final judge," an expression of his opinion would end the matter absolutely. Now he is not an expert, but an official without practical knowledge of the matter: he is not on the spot and it must be assumed he will rely upon information obtained at second hand. Possibly he is not confined to any manner of obtaining evidence, nor restricted to such as is admissible in a court of law, but nevertheless it is an inquiry which may lead to forfeiture of the property rights of one of the parties and, therefore, he is bound to conform to all requirements of substantial justice, and the party liable to lose is entitled to be heard.

Unsafe Method—Division of Award.

Lappage vs. C.P.R.—

The plaintiffs husband was employed in the defendants yards at West Toronto. He was working upon a car held up by trestles without the trucks beneath when the car fell and he was crushed.

One witness was called on behalf of the company—this was their divisional foreman, who testified that in his opinion the car was securely jacked up: he did not consider it unsafe and, in fact, he would prefer that method to any other.

It took the jury two hours to reach a verdict, but they found the company guilty of gross negligence in not taking proper precautions. They held that the supports used were not sufficient to carry the weight of such a heavy car and that jacks and trestles were both needed. In addition they considered the system of jacking defective and that the foreman had not paid proper attention to the support of the trestle which collapsed.

The case was tried before Mr. Justice Clute at Toronto and the jury awarded $4,000 damages, which his lordship apportioned equally between the widow and the one infant child.

It is interesting to note a distinction in the measure of damages between cases where death results and those where the unfortunate is injured only. In the latter the plaintiff's business suffers and he may recover for the time lost, the pain suffered, and any reduction of his earning power—in fact for any and all direct injuries that can be proved. Where death results it is an entirely different action, thus personal pain or grief has nothing to do with the cause of action. If he suffered for several months prior to decease the grievance ceases with his death. The new action arises out of the death —belongs to those bereaved and is for loss of support only: therefore a widow or infant child has good ground for action and will generally secure a considerable award, as they depended on the deceased for support, where as a grown up family or a widow with independent means do not suffer loss of support and can seldom succeed.

So, too, if the deceased be a young man and able bodied the verdict will be great, while if he be advanced in years or incapacitated the verdict must be small, as in such cases the amount of support which could be reasonably expected is small and the loss according.

Insulation of Electric Wires—Negligence—Duty of Employee.

Fortin vs. Quebec Railway, Light & Power Company—

The company have a power-house at Montmorenci Falls, from which they supply light and power to the City of Quebec and other places. In their power house were a great many wires, some of high voltages, all strung high overhead and reached by means of a moveable ladder which led to a platform above three or four feet wide and stretching from side to side.

The plaintiffs husband was line foreman for the company. On the day of the accident he was directed to change some wires and ascended the ladder to the platform—he then