

STREET, J.]

[Jan. 13.

N RE BE FIELD AND STEVENS.

Interpleader—Jurisdiction—Mining agreement—Construction—Lease or license—Foreigners—Foreign debt.

Under an agreement with respect to a mining property in this Province, payment was to be made in a foreign country to foreigners residing therein, their second mortgagees in possession, by a person also residing therein, of a sum of money for each ton of ore mined by him. A large sum due under the terms of this agreement was claimed by the payees named in it, and also by the first mortgagee of the property, who was in the jurisdiction.

Held, that upon the true construction of the agreement, it was a mere license to mine, not conferring an exclusive possession of the property, and a mere agreement for the sale and purchase of the ore when mined; and therefore the first mortgagee had no right of action for the money, but, at the most, only a claim for unliquidated damages for the wrongful removal of ore; and the licensee was not entitled to an interpleader order.

Held, also, affirming the decision of the Master in Chambers, 17 P.R. 300, that the Court had no jurisdiction to compel foreigners to come here with their claim and litigate it, the debt in question having no existence here.

Credits Gerundeuse v. Van Weede, 12 Q.B.D. 171, distinguished.

W. E. Raney, for Benfield, the appellant.

W. H. Biggar, for Richardson, the claimant.

J. Bicknell, for Stevens et al., the respondents.

MEREDITH, C.J., ROSE, J., }
MACMAHON, J. }

[Jan. 14.

COTE v. HALLIDAY.

Division Court—Appeal—R.S.O., c. 51, s. 148—Appeal direct from judgment at trial—Jurisdiction—Costs.

An appeal by the plaintiffs from the judgment of the 9th Division Court in the County of Huron, dismissing, as against the defendant Hunter, an action upon a promissory note.

Held, that there was no jurisdiction to hear the appeal, because it was taken directly from the judgment at the trial, and not from an order upon an application for a new trial: s. 148 of the Division Courts Act, R.S.O., c. 51.

Held, also, that this Court had jurisdiction, in quashing the appeal for want of jurisdiction, to give costs to the opposing party who raised the objection to the jurisdiction.

Appeal quashed with costs settled and allowed at \$10.

Clute, Q.C., for the plaintiffs.

D. Armour, for the defendant Hunter.

MEREDITH, C.J., ROSE, J., }
MACMAHON, J. }

[Jan. 15.

PARKES v. BAKER.

Security for costs—Public officer—59 Vict., c. 18, s. 7—Pleading—Affidavits.

Where a person who holds a public office is made defendant in an action, the pleadings must be looked at to determine whether he is sued in his