

lot of land and from removing therefrom and appropriating to themselves any manganese ore, and that they be condemned to pay to the plaintiff the said sum of \$500 with interest and costs;

"Whereas the defendants orally plead in answer to the action that the lease made to the defendant William Quinn is an emphyteutic lease and that he enjoys all the rights attached to the quality of a proprietor with respect to the lot of land conveyed to him; that he therefore is entitled to all mines and minerals on the said lot of land, subject only to the provisions and restrictions of the general law respecting mines; and that the reservation of all mines and minerals contained in the said lease had been superseded by the stipulation that clause 7 contained in the printed form of lease used, was null and void, which clause reads as follows: 'The lessor, his heirs and assigns, and his or their agents, shall have access to the property now leased at all times for the purpose of searching for and extracting any mines or minerals which may be therein, and for this purpose shall have the right to take possession of such part of the said leased lands as may be necessary to carry on any mining researches or operations, without the said lessee having by reason thereof any claim to any other compensation than the diminution of the rent for the part which may be so occupied by the lessor, and for his standing crops and improvements, such compensation to be fixed by arbitration'; and that consequently the plaintiff has no right to the mines and minerals on the said lot of land and is unfounded in his action;

"Whereas it is proved that the defendant John Ballantyne carried on mining operations on the said lot of land during 8 or 9 days with a gang of seven or eight men at the end of March, 1891, excavated thereon a pit, 20 feet square to a depth of from 12 to 15 feet, and extracted and removed a quantity of manganese ore which weighed with the casks 1700 pounds and was worth \$30 a ton, and that the damages caused by the operations to the land amounted to from four to five dollars;

"Considering that the absolute owner of an immovable can convey either the full

ownership thereof or a restricted right of ownership therein, reserving for example either the usufruct thereof, or the right to exercise a servitude thereon or the right to the mines or minerals therein, and that the ownership conveyed by an emphyteutic lease may therefore be either absolute and full or restricted;

"Considering that the lease in question in this cause is an emphyteutic lease, and that the property conveyed by it to the defendant William Quinn is only that described and limited therein;

"Considering that by the said lease the plaintiff reserved to himself all mines and minerals on the lot of land conveyed thereby to the defendant William Quinn, and that the question raised by the plea is whether or not this reservation was superseded by the suppression of clause seven of the conditions of the lease;

"Considering that the purport and effect of the said clause was that the lessee, in the event of the lessor exercising his right to mine on the lot of land, should have no right to any compensation for the loss of the land required for the mining operations and should only be entitled to a diminution of the rent for the part which might be so occupied by the lessor and to the value of his standing crops and improvements, and that the suppression of the said clause did not supersede the reservation of the mines and minerals in the lease in question, but left the exercise of the right thereto to be regulated by the law relating to mines and mining operations;

"Considering moreover that the reservation of all mines and minerals contained in the lease is unambiguous and clear, and that full effect must be given to such stipulation, which would have been struck out as well as clause 7, had it been the intention of the parties that such reservation should not be made;

"Considering therefore that the defendants are unfounded in their pretension that the reservation of all mines and minerals was superseded, and that such mines and minerals were never conveyed to the defendant William Quinn and always remained the property of the plaintiff;