

JANUARY 17TH, 1902.

DIVISIONAL COURT.

DODGE v. SMITH.

*Estoppel by Deed—Mines and Minerals—Possessory Title against Patentee — Subsequent Reservation of Minerals in Grant by Patentee—Effect of—Surface Possession—Notice—Evidence.*

Appeal by defendants from judgment of LOUNT, J., in action to restrain defendants from trespassing upon lot 17, in the sixth concession of the township of Bedford, in the county of Frontenac, and digging for or removing any minerals therefrom. In 1864, the Crown granted the lot to Edwin Dodge, Dodge registered the deed in 1866, and in 1877, conveyed to his son Elwin G. Dodge. In 1884, Edwin G. Dodge conveyed to Patrick Murphy, by deed containing a clause, saving and excepting all mines, minerals, and ores. Murphy made a mortgage for the balance of the purchase money to Dodge, which contained a clause "saving and excepting the mines, which said mortgagor has no claim to." The plaintiffs claim the minerals under the will of Edwin G. Dodge. The defendants' title is derived through Murphy. The trial Judge found that P. Murphy had been in possession for two years prior to the deed to him from Dodge; that the lot had been fenced in for upwards of ten years either by P. Murphy, or his brother J. Murphy who had been in possession as a squatter for eight years, and who had then left it; that P. Murphy went into possession as a squatter, and remained there for ten years before the deed to him from Dodge; but that Murphy's conduct in dealing with the grantee of the Crown, Dodge, in receiving the deed from him, and giving him the mortgage with the reservations, and in not asserting at any time a title by possession, disentitled him now, through his representatives, to assert it; that the deed and mortgage read together operated to estop him and them from claiming title to the minerals; that when P. Murphy sold, his conveyance and the subsequent conveyances excepted the minerals, and if not estopped against the grantee of the Crown, he and they are estopped against those who had notice through the registry office, that P. Murphy made no claim to the minerals.

G. H. Watson, K.C., for appellants.

W. J. McWhinney and S. B. Woods, for plaintiffs.

Judgment of the Court, FALCONBRIDGE, C.J., and STREET, J., was delivered by STREET, J.—At the date of the conveyance of July 10th, 1884, from Dodge to Murphy, and