

Graham, E.J.] THOMPSON v. THOMPSON. [Feb. 11.

*Building not attached to land—Sale with consent of owner—
License coupled with an interest—Consideration.*

Defendant gave permission to his son M. to erect a small building upon land of which defendant was in the occupation, agreeing that the building, which was not intended for any permanent purpose in connection with the land should remain personal property and be removable at the owner's pleasure.

Plaintiff, with the assent of defendant, purchased the building from M., defendant agreeing that it could be taken off later.

Held, that defendant could not afterwards claim that the building was a fixture; and that the license given to plaintiff, when he purchased and paid for the building was a license coupled with an interest, which could not be revoked. But, if otherwise, there being a consideration plaintiff could recover damages for breach of the promise.

J. L. Ralston, for plaintiff. T. S. Rogers, for defendants.

Graham, E.J.] ROGER v. MINUDIE COAL CO. [Feb. 13.

Railway Act, R.S. (1900) c. 99, s. 219—Excessive tolls—By-law not approved—Pleading—Counterclaim.

In an action brought by plaintiff as liquidator of the Canada Coal and Railway Co. against the defendant, for moneys paid on defendant's account to the Intercolonial Railway for cars used at the defendant's mine, a balance was found in favour of plaintiff, against which defendant sought to have set off a claim for excessive charges alleged to have been made by plaintiff for the carriage of defendant's coal. By the Railway Act, R.S. (1900) c. 99, s. 219 (formerly Acts of 1898, c. 4, s. 19), it was provided that no tolls should be levied or taken until the by-law fixing such tolls had been approved by the Governor-in-Council, etc. It appeared that the plaintiff company acquired their line from a former company, known as the "Joggins Railway Co.," and that the Governor-in-Council had, in 1887, approved a by-law of that company fixing the toll for transportation of coal at 28c. per ton, and that after the road passed into the hands of the plaintiff a by-law was passed fixing the rate at 40c. per ton and