[Mar. 15.

SEYMOUR *v.* LYNCH.

Written instrument—Construction of—Lease or license—Authority to work mine.

In an indenture, describing the parties as lessor and lessees respectively, the granting part was as follows: "Doth give, grant, demise and lease unto the said (lessees) the exclusive right, liberty and privilege of entering at all times for and during the term of ten years from 1st January, 1879, in and upon (describing the land), and with agents, labourers, and teams, to search for, dig, excavate, mine and carry away the iron ores in, upon, or under said premises, and of making all necessary roads, etc.; also, the right, liberty and privilege to erect on the said premises, the buildings, machinery and dwelling houses required in the business of mining and shipping the said iron ores, and to deposit on said premises all refuse material taken out in running said ores." There was a covenant by the grantees not to do unnecessary damage, and a provision for taking away the erections made, and for the use of timber on the premises, and such use of the surface as might be needed.

The grantees agreed to pay twenty-five cents for every ton of ore mined, in quarterly payments on certain fixed days, and it was provided how the quantity should be ascertained. It was also agreed that the royalty should not be less than a certain sum in any year. The grantees also agreed to pay all taxes, and not to allow intoxicating drinks to be manufactured on the premises or carry on any business that might be deemed a nuisance. There were provisions for terminating the lease before the expiration of the term, and a covenant by the lessor for quiet enjoyment.

In an interpleader issue, where the lessor claimed a lien on the goods of the lessees for a year's rent, due under the said indenture, by virtue of 8 Anne, c. 14, s. 1,

Held, per RITCHIE, C.J., and HENRY and TASCHEREAU, JJ., that this instrument was not a lease, but a mere license to the grantees to mine and ship the iron ores, and the grantor had no lien for rent under the statute. STRONG, FOURNIER, and GWYNNE, JJ., contra.

The court being equally divided, the appeal was dismissed without costs.

Northrup, for the appellants.

Chute, for the respondents.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

BEATTY *v.* SHAW *et al.*

Mortgage—Executor and trustee—Void discharge of mortgage—Payment for Improvements—Mistake of title.

H. by his will appointed F. and W. executors and trustees of his estate. F., for the purpose of securing a debt due by him to the estate, executed a mortgage to W. W. died intestate, and F., five years subsequently, having agreed to sell the mortgaged premises to M., executed a statutory discharge of the mortgage, which he expressed to do as sole surviving executor, and conveyed the estate to M.

Held, affirming the judgment of BOYD, C., 13 O. R. 21, that the act of F. in executing such discharge, had not the effect of releasing the land from the mortgage.

Held, also, in this reversing the judgment, that M., the purchaser from F. and his assigns, were not entitled to any lien for improvements on the lands during their occupancy thereof.

J. C. Hamilton and *Alan Cassels*, for the appellant.

Bain, Q.C., for the respondents.

LONDON AND CANADIAN LOAN COMPANY *v.* MORPHY *et al.*

Stock exchange—Sale under process of seat at—Sequestration.

The plaintiffs had recovered judgment against the defendants, M. & N., both of whom were members of the Toronto Stock Exchange, each owning a seat at the board thereof. The seats at that board it was considered could not be sold under *fi. fa.*, and an application was made to the Queen's Bench Division for an order to sell the seats which had been seized under a sequestration, which was refused by WILSON, C.J., whereupon the plaintiffs appealed; and on the argument it was made to appear that M. had paid off the judgment of the plaintiffs, and was carrying on the appeal for the purpose of obtaining the seat owned by N. This court, under the circumstances, and aside from the fact that the ultimate com-