Mr. D' ..on, K.C., Master-in-Chambers, (not reported) and *Fox v. Star Co.* (1900) A.C. 19.

W. A. Ferguson, for plaintiff. *Blackstock,* K.C., for defendant.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] RODGER *v.* MINUDIE COAL CO. [Dec. 14, 1907.

Railway company—Tolls for carriage of goods—Non-approval of by-law fixing rates—Right to recover- Claim of refund disallowed—Reasonableness of rate—Amendment allowed to raise question—New trial.

Action by plaintiff as liquidator of the Canada Coal and Railway Co., for an amount claimed for car rental, etc. Defendant pleaded by way of offset, a claim for re-payment of overcharges for the carriage of coal made by the company in liquidation.

The evidence shewed that the Joggins Railway Company, predecessors in title of the Canada Company, passed a by-law which was approved by the Governor in Council fixing the rate per ton for the carriage of coal over their line and that the Canada Company subsequently passed a by-law increasing the rate, and that the defendant company were charged toll as fixed by the latter by-law, although it had never received a sanction of the Governor in Council, and they claimed to be entitled to recover the difference between the two amounts.

Held. 1. The by-law passed by the Joggins Company relating to the tolls to be taken by that company was not a regulation affecting the road and running with the property, and was not binding upon their successors in title.

2. The Canada Company was not liable to refund moneys paid to them for the carriage of goods simply because they had failed to secure the approval of the Governor in Council to the by-law fixing the rates. The trial judge should, however, have allowed an amendment applied for on the trial intended to raise the question of the reasonableness of the rates taken, and that