# LEGAL NOTES.

**[This department will appear in the third issue of every month. Should there be any particular case you wish reported we would be pleased to give it special attention, providing it is a case that will be of special interest to engineers or contractors.—Ed.]**

## TENANT IS LIABLE FOR RENT UNTIL EVICTED—RIGHTS UNDER A MINING LEASE.

**Clary et al v. Lake Superior Corporation.**

On the 31st May, 1901, the plaintiffs made application for mining lease of 80 acres of land in Township of Hagar, Ontario. They proved discovery of copper, paid the rent fixed by Statute and became entitled to a lease for ten years from date. In May, 1902, they were notified that rent was due but made no reply. On the 10th August, 1902, they sublet the full 80 acres to the defendants who covenanted in the lease to keep up the Government rental and also to pay the plaintiffs' royalties which they guaranteed should amount to $75 per month for five years. No development was done by either party, but the Corporation paid the monthly rental to plaintiffs until February, 1906, when they were advised that the lease to the plaintiffs had lapsed and been disallowed and thereupon refused to pay further rent. On the Government records the lease had been marked lapsed and the lands open for re-entry, but the department had taken no steps whatever to disturb or eject the lessees if they were on the ground. Meanwhile the plaintiffs made a fresh application, got a new lease in September, 1906, and when the five years' term was up they sued the Lake Superior Corporation for the remaining 18 months' rent at $75 a month.

The Corporation sets up two lines of defence:—Firstly,—that the lessors had not at the time of the lease such title as would enable them to make such lease. Secondly,—that whatever title plaintiffs did have had ceased before they refused to pay rent.

The first argument has no validity at law for the tenant is estopped from denying his landlord's title. Having solemnly accepted a lease from the landlord, he is debarred from ever denying that the landlord had a good title at that time.

As to the second, the chancellor points out that the lessors' claim to rent is founded upon this, that the land demised is enjoyed by the tenant during the term of the contract. Now the tenant cannot make return for a thing which he has not got and therefore if the tenant be deprived of the demised premises, the obligation to pay rent ceases. After accepting a lease **it is the duty of the tenant to pay rent** to the lessor **so long as he retains possession under that lessor.** Now if another claimant by paramount title ejects him from the land the obligation to pay ceases and likewise if such holder by stronger title forces the tenant to attorn and pay rent to him, the tenant is relieved from paying to the original landlord inasmuch as he ceases to hold under such original landlord. But in this case the owner by paramount title (the Province) did not eject the Corporation from the land nor do any act whatever in that behalf. In fact they actually renewed the title of the plaintiffs so that even at the end of the term the plaintiffs were able to give the defendants full power to enter upon and develop the mine. The Defendant Corporation is not relieved from payment of rent and the plaintiffs are entitled to the full amount of their claim and costs.—11 O.W.R., 381.

It is worthy of notice that although plaintiff Clary had ceased to have any legal right in the lands in question, he was successful in securing a new lease. This is in pursuance of a policy of the Crown, and it is not unusual for the Crown to exercise its grace in favor of a locatee whose legal claim has lapsed and in at least one case recorded such claim to favor is recognized as amounting to a substantial interest in the lands.—Couse v Clive, 19 U.C.R., 61.

## LIABILITY OF CONTRACTORS AND SUB-CONTRACTORS FOR INJURY TO WORKMEN.

**Kitts v. Phillips & Co., et al.**

Phillips & Company were contractors for a portion of the the C.P.R. near Parry Sound (Ontario), and sub-let the rock cutting to one Montgomery. The latter in turn placed a foreman in charge and engaged workmen, amongst whom was the plaintiff Kitts. While Kitts was engaged in drilling rock at the bottom of a deep cut, a large rock from the side of the cut, and above where plaintiff was working, became loosened and rolled down the bank striking the plaintiff and causing him serious injury. The plaintiff alleged the accident was due to the negligence of those in charge and entered action against Phillips & Company, Montgomery and the latter's foreman.

On trial the evidence showed that Phillips & Company had sublet to Montgomery who was an independent contractor; **they had no control over him,** and no say as to **how** the work should be done, their only claim was that he should duly complete the cutting; consequently they could **not** be **liable for his acts,** and the case was dismissed as against Phillips & Company. The Court further held that it was the duty of the foreman and of Montgomery himself to see to the removal of all loose or overhanging rocks from the sides of the cuts, and in short to keep everything in safe condition so that workmen below might not be injured. By the foreman's negligence—the rock which injured the plaintiff was not removed and both he and his employer Montgomery are liable in damages to the plaintiff. Judgment for the plaintiff $1,200 against defendant Montgomery and his foreman.—(Teetzel, J., December, 1907).

## INJURY AS RESULT OF BROKEN RAIL—PLAINTIFF MUST PROVE NEGLIGENCE.

**Ferguson v. C.P.R. Company.**

The plaintiff was employed as mail clerk upon a train which when a few miles west of Fort William left the tracks owing to a broken rail. The plaintiff was injured in the accident and brought this action for injuries sustained, alleging the occurrence to be due to defendants' negligence. There was no denial that the rail broke from the impact of the engine, which was a heavy freight engine, when rounding a bend in the road described as a 2.30 degree curve.

In answer to questions submitted to them, the jury found the defendants guilty of negligence in drawing a first-class train with a heavy freight engine at an excessive rate of speed on a curve, and that the breaking of the rail was caused by the force of the impact of the engine. On this evidence and these findings the plaintiff was successful and secured a verdict from which the company appealed to the Divisional Court.

In giving judgment the latter Court points out that the plaintiff has failed to prove negligence on the part of the Company. He has shown that the train was travelling at 40 miles an hour and was a somewhat heavy engine for passenger traffic, but this itself does not prove negligence or lack of care against the defendants. On the other hand, they produce evidence that their passenger trains have a schedule rate of 36 miles per hour on that part of the road and one expert swears it would be safe for them to make even 100 per hour on so slight a curve. Thus if the accident itself raise-