

THE NOVA SCOTIA STEEL COM- } APPELLANTS;
 PANY (DEFENDANTS)..... }

1904
 *Dec. 2, 3.

AND

JAMES HUBERT BARTLETT } RESPONDENT.
 (PLAINTIFF) }

1905
 *Jan. 31.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*Crown lands—Mining lease—Trespass—Conversion—Title to lands—
 Evidence—Description in grant—Plan of survey—Certified copy.*

The provisions of section 20 of "The Evidence Act," R. S. N. S. (1900) ch. 160, do not permit the reception of a certified copy of a copy of a plan of survey deposited in the Crown Lands Office to make proof of the original annexed to the grant of lands from the Crown.

*PRESENT :—Sedgewick Girouard, Davies, Nesbitt and Killam JJ.

1904

NOVA SCOTIA
STEEL CO.

v.

BARTLETT.
—

APPEAL from a judgment of the Supreme Court of Nova Scotia, setting aside the judgment entered at the trial on a verdict for the defendants and ordering a new trial.

The action was by the respondent claiming from the appellants the value of certain iron ore alleged to have been mined on the area covered by a lease to him from the Government of Nova Scotia, in 1889. The case was tried, for the second time, before Mr. Justice Meagher, with a jury, and questions were submitted to the jury, which they answered in favour of the defendants. Upon these findings judgment was entered for the defendants, but on motion on behalf of the plaintiff the Supreme Court of Nova Scotia ordered a new trial. The defendants now appeal.

The plaintiff claimed (1) the value of iron ore which the defendants purchased from the Pictou Charcoal Iron Co., paying them for the same, and (2) the value of other iron ore mined by the New Glasgow Iron, Coal and Railway Co. The defendants' contention with reference to the first part of the plaintiff's claim was that, although some of the ore was mined within the limits of the plaintiff's lease, this lease covered a part of the property included in a grant made to one Peter Grant and others, dated 3rd November, 1785, *in which the ores were not reserved to the Crown*, and that the ore in question was so mined by the Pictou Charcoal Iron Company, upon the Peter Grant property under agreement or lease from the present owners of that property. With regard to the second part of the plaintiff's claim, it was common ground that the plaintiff's lease covered land granted to one Finlay Cameron, one of the grantees in the said grant dated 3rd November, 1785, and the defendants' contention was that the ore in question was mined on this Finlay Cameron lot, and that it was so mined under agree-

ment or lease from the present owners of that lot. As regards both parts of the plaintiff's claim it was common ground that if the ore was mined within the limits of the lands granted to Peter Grant and Finlay Cameron in 1785, the plaintiff must fail. Both contentions of the defendants were denied by the plaintiff and the main issues at the trial were as to the exact location, on the ground, of the Peter Grant property and of the Finlay Cameron lot. Although the grant in question refers to a plan as being annexed to it, neither the original grant nor the counterpart at the Crown Lands Office have now any plan annexed.

1904
NOVA SCOTIA
STEEL CO.
v.
BARTLETT.

In stating the reasons for the judgment appealed from, Mr. Justice Townshend, after making reference to certain hearsay evidence as improperly admitted, proceeds as follows:

"While in my opinion such evidence could not properly be received in this case, still more objectionable was the reception of certain plans, or copies of plans, found in the Crown Land Office, which, without doubt, must have carried great weight with the jury. The first of these plans is these marked 'W. W. F.' There was no plan attached to the grant under which Peter Grant and others got their title from the Crown. The grant says: 'and has such shape, form and marks, as appears by a plan thereof hereunto annexed.' * * * The last revision of the statutes (R. S. N. S. (1900) ch. 163, sec. 20), provides: '(1) A copy of any duplicate original of a grant from the Crown deposited in the Department of Crown Lands, certified by the Commissioner of Crown Lands, or a copy of any grant from the books of registry for any registration district in which the land granted is situated, certified under the hand of the registrar of deeds, shall be received in evidence in any court to the same extent as the original grant.' '(2). If any such duplicate origi-

1904
 NOVA SCOTIA
 STEEL CO.
 v.
 BARTLETT.

nal contains any reference to any plan, and there is on file in such department a plan corresponding to the description, or meeting the requirements of the said duplicate original, *such plan shall be deemed to be the plan referred to in such duplicate original notwithstanding the same is not annexed to such duplicate original.*

* * * It will be observed that the plan produced in evidence 'W. W. F.' was a certified copy of a plan shown to witness by Mr. Austin, in the Crown Land Office, and not the *plan on file* in the office. Objection was at once made that the statute did not make a certified copy evidence, and it is evident that it does not, and the objection was sound."

The questions at issue on the present appeal are stated in the judgment now reported.

Newcombe K.C. and *Henry* for the appellants.

W. B. A. Ritchie K.C. for the respondent.

The judgment of the court was delivered by :

SEDGEWICK J.—I am of opinion that this appeal should be dismissed.

When this case was on appeal before us, after the first decision of the Supreme Court of Nova Scotia (1), we held, (26th Feb., 1903), affirming the judgment of that court that the area described in the mining lease under which the plaintiff claims was clearly defined and ascertained, and that all reference in the description therein to the southern line of Peter Grant's lot might be eliminated as *falsa demonstratio*.

Now, it was clearly proved at the second trial that most, if not all, of the workings, whether old or new, complained of were within that ascertained area, and it follows, therefore, in my view, that the plaintiff made out a *primâ facie* case, having put in his lease from the Crown, and having proved a trespass or con-

version by the defendants or those under whom they claim, upon any lands or goods within its boundaries. But the defendants claiming under the successors in title of Peter Grant, whose patent gave him a title to all minerals (the royal metals, of course, accepted), had a right to prove that, notwithstanding the lease from the Crown of the minerals below the surface, the Peter Grant lot overlapped that tract and that the ore taken out was taken out wholly within the limits of of the Peter Grant patent. This for the most part they established by sufficient evidence but they did not do it *in toto*.

1905
NOVA SCOTIA
STEEL CO.
v.
BARTLETT.
Sedgewick J.

The principal evidence that was given to shew the true location of the southern line of the Peter Grant lot was that of the surveyor Holmes, who, although at the first trial he had placed it as co-terminous with the boundary of the mining lease, at the second trial admitted that it was several chains south of that line. No witness gave any evidence to shew that the true line was further south than where Holmes, at the last trial placed it. The defendant company were, therefore, held to have been within their rights in respect to all ore mined north of the line so proved by Holmes, but there was evidence, and so far as I can make out, undisputed evidence, that the new workings, as they are called, from which ore was taken and which came into the hands of the defendant company, were south of the Holmes line.

Alexander McDonald, who was the director and secretary of the company, testifies that there were twelve hundred tons taken out of the new shaft, (otherwise spoken of as the new workings), in the year 1900. Now, if the new shaft was south of the only southern line of the Peter Grant lot, then the plaintiff must succeed, and a verdict for the defendants must be held

1905 to be contrary to the evidence, and the order for a new
NOVA SCOTIA trial was consequently right.
v. STEEL CO.

v. BARTLETT.
Sedgewick J. I do not think it necessary to express any opinion
as to the view which Mr. Justice Townshend took as
to the improper receipt of alleged hearsay evidence,
but I think he was right in his view as to the recep-
tion of the copy of the plan alleged to be a copy of the
plan attached to the original grant.

If the plan itself had been produced and proved by
a competent officer to be an original on file in the
Crown Lands Office, it would, at common law as well
as under the statute of 1900, have been evidence.
Having probably been made by the officers of the
Crown Lands Department about a century before the
plaintiff's lease, it was certainly evidence against the
Crown, not conclusive evidence, but evidence, as an
admission by the Crown of the character of the country
evidently surveyed by its officers and granted to
settlers. And, if it is evidence against the Crown, it
is likewise evidence against all persons claiming under
the Crown subsequently to its coming into existence.

The appeal should, therefore, be dismissed with
costs.

Appeal dismissed with costs.

Solicitor for the appellants: *W. A. Henry.*

Solicitor for the respondent: *H. C. Borden.*
