Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Reynolds and another v. *The Attorney-General for Nova Scotia and others, from the Supreme Court of Nova Scotia; delivered 29th February* 1896.

Present:

LORD WATSON.
LORD MORRIS.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

This case comes by appeal from a judgment of the Supreme Court of Nova Scotia affirming a judgment of the Honourable Mr. Justice Meagher, by which it was decreed that the renewal of the 21st of August 1889 of the license to work dated 23rd of August 1887 and granted to the Appellants by the Commissioner of Mines and Public Works for the province of Nova Scotia and which purported to be granted and issued under the provisions of Chapter VII. of the Revised Statutes of Nova Scotia Fifth Series was unauthorised by the said Act and was null and void and consequently that the said renewal license to work should be set aside and further decreed that the Respondent Hugh St. Quentin Cayley on the 14th of April 1890 became entitled to have granted to him by the said Commissioner under the provisions of the said Statute a lease of area described in his application and that he should

88944. 100.—3/96.

on the granting of the same stand possessed thereof for the benefit of himself and the other relators on whose behalf he made application for the said lease, and further decreed that the lease of the said area granted to the Appellants by the said Commissioner and dated 18th February 1891 was unauthorised and null and void and that the Appellants should deliver up the same to be cancelled. The main question in this case is whether the area for which the relator Cayley applied for a lease on the 14th April 1890 was then vacant. The leading facts of the case are as follows:—By lease dated 3rd of December 1866 the Commissioner of Mines of Nova Scotia granted a lease of a certain coal area to one Patrick Collins for a term of twenty years to commence from the 25th August 1866. The lease contained the usual clause which provided that the holder of the lease was entitled to renew for a further extended period of twenty years provided six months' notice in writing was given previous to the expiration of the lease of the intention of the holder of the lease to renew for such further period. The lease of the 3rd of December 1866 through various assignments became vested previous to August 1886 in the Respondents, the Toronto Coal Company, who were then in possession of the said demised area and worked the coal within same. The Toronto Coal Company had previous to the expiration of the six months instructed their solicitor to apply to the Commissioner for the renewal of the said lease but by some miscarriage the application was not made until the 17th of August 1886. The Commissioner of Mines refused to renew on the ground that the six months' notice from the lessee to renew prior to the expiration of the lease had not been given. Consequently the area now in dispute became vacant on the 26th of August 1886 and on that day one J. W. Kelly Johnson

made application pursuant to Section 84 of Chapter VII. of the Revised Statutes Fifth Series for a license to search within the said area which had so become vacant. That license was granted and on the 23rd of September 1886 assigned by Johnson to the Appellants. The Toronto Coal Company remonstrated against the granting of the license to Johnson, but in vain, the Commissioner holding and rightly holding that he had no discretion to refuse the application of Johnson. On the 23rd August 1887 the Appellants applied for a license to work the area and the Commissioner of Mines on that day issued such license to them. On the 21st August 1889 the Appellants pursuant to Section 95 applied to the Commissioner for a renewal for one year of the license of the 23rd August 1887 and their application was entered in the books of the Commissioner's office. On the 14th April 1890 the relator Hugh St. Quentin Cayley on behalf of himself and the other Respondents applied to the Commissioner under the provisions of Chapter VII. of the Revised Statutes Fifth Series as amended by an Act passed on the 17th April 1889 for a lease of a portion of the area in dispute. This application was refused by the Commissioner on the ground that the renewal license to work of the 21st August 1889 to the Appellants was still in force, and on the 20th August 1890 the Appellants applied to the Commissioner for a lease of the said area. After some correspondence the Commissioner held an investigation and thereupon decided that the Appellants were entitled to a lease pursuant to their application of the 20th August 1890 and that the Respondent, Cayley's, application for a lease could not be granted and accordingly the Commissioner by lease 18th February 1891 granted to the Appellants the disputed area for a term of twenty years. Several questions were raised

by the Respondents as affecting the validity of this lease but the case turns upon one question viz. whether the renewal license of the 21st August 1889 was valid and authorised by the Statute. Now the Commissioner had no power to grant any renewal license except under the statutable authority conferred on him by Section 95 of Chapter VII. of the revised Statutes Fifth Series, which enacts that "any license to "work shall be for a term of two years from "the date of application and shall be extended "to three years upon the additional payment by "the holder of the license of one half of the "amount originally paid for such license." The amending Act of 17th April 1889 repeals amongst others Section 95 and amends Section 91 by substituting "lease" for "license to work." When the Appellants applied for the renewal for one year on the 21st August 1889 the power of the Commissioner to grant such renewal was gone as the section of the Statute conferring it had been repealed. It has however been contended on the part of the Appellants that the Act of 1889 ought not to be construed so as to have the effect of taking away their right under Section 95 of Chapter VII. No doubt the maxim *omnis nova constitutio futuris formam imponere debet non præteritis* has been applied to the extent that a new law ought to be construed so as to interfere as little as possible with vested rights, and in *Main and others* v. *Stark* (15 Appeal Cases, 388), the Earl of Selborne says "words not requiring a "retrospective operation, so as to affect an existing "*status* prejudicially, ought not to be so con-"strued," yet the result is that in all cases it is necessary to ascertain what the Legislature meant. In the present case the only existing license the Appellants had when the amending Statute passed was one for two years expiring in August 1889. They had a privilege to get an extension

for one year under Section 95 but had no accrued right and the object of the legislation of 1889 was to get rid of licenses and substitute leases. It was open to the Appellants after the passing of the Act of 1889 and before the expiration of the two years to have applied for a lease but, instead of doing so, they applied for a renewed license under the provisions of a repealed Statute. The Respondents, the Toronto Company, had in 1886 fallen into the mistake of not applying for a renewal of their lease six months before it expired and thereby they lost their right of renewal and thus afforded the Appellants the opportunity of obtaining their license to work the coal in the disputed area. The Appellants in turn by not applying for a lease until the 20th of August 1890 gave the Toronto Coal Company through Hugh St. Quentin Cayley the opportunity of applying for a lease of the disputed area as being then vacant. Their Lordships are of opinion that the decree of the Supreme Court should be affirmed and will humbly advise Her Majesty to that effect. The Respondents are to have the costs of this appeal.