

and cases cited), and there are here no special circumstances giving rise to such a relation between the contending parties.

It follows that the Seaboard Minerals Corporation is not required to pay to Martin a royalty on the feldspar mined after December 27, 1937, the date on which the original lease expired.

Exceptions overruled.

BRANCH, J., was absent: the others concurred.

Merrimack, }
April 6, 1937. }

GOODREAU A. GILBERT *v.* RAYMOND JOYAL.

John M. Stark and Ora W. Craig (Mr. Craig orally), for the plaintiff.

Devine & Tobin (Mr. Devine orally), for the defendant.

Per Curiam. Assuming that both parties were asleep at the time of the accident, it might be found that the plaintiff was not at fault (*Salvas v. Cantin*, 85 N. H. 489), and that the defendant was. (*Bushnell v. Bushnell*, 103 Conn. 583.)

New trial.