

equity, and could not be had except under the like circumstances. *Ontario Bank v. Trowern*, 13 P.R. 422, was also referred to as an express decision upon the point. Application withdrawn, though not to be taken as assenting to the defendant's contention.

A. P. Barnhill, for the application. W. H. Trueman, contra.

Province of British Columbia.

SUPREME COURT.

Irving, J.] MCNERHANIE *v.* ARCHIBALD. [April 27.
Mineral Act—Free miner's license—Partnership—Effect of expiration of license.

In 1895 plaintiff and defendant entered into partnership, as prospectors. In June, 1896, the defendant staked a mineral claim called the Dorothy Morton. Plaintiff claimed an interest in this by virtue of the partnership, and at the trial the jury found there was a partnership, and that it applied to the Dorothy Morton. Plaintiff had a valid free miner's certificate at the time the partnership was entered into and at the time the Dorothy Morton was staked out, but permitted it to lapse in July, 1897, renewing it in August of the same year. Defendant's counsel asked for a non-suit, relying upon ss. 9 and 84 of the Mineral Act.

Held, that the existence of an unexpired free miner's certificate is a conditional limitation (see *In re Machu*, 21 Ch. D. 838), providing for the termination of the miner's estate, or for its abridgment by operation of law. The Act declares 'that the defaulting person's rights and interests in or to any mineral claim shall be absolutely forfeited—that is, to the Crown—provided, however, in the case of co-ownership (s. 9) or in the case of partnership (s. 84), the failure shall not cause a forfeiture, or act as an abandonment of the claim, but the interest of the co-owner, or the partner making default, shall, ipso facto, become vested in the continuing co-owner or partner. This amounts to an absolute statutory declaration that the plaintiff forfeited to the Crown his right in the claim, and that thereupon the claim became vested in the defendant.

Macdonell, for plaintiff. Davis, Q.C., for defendant.

Irving, J.] IN RE TOM HONG GREW. [April 30.
Practice—Interpleader—Originating summons.

A tenant of certain property was requested severally by his landlord, by the assignee of the landlord, and by the mortgagee of the premises to pay the rent to them respectively. He thereupon took out an ordinary summons in Chambers calling upon said several parties to interplead.

Held, that the summons should have been an originating summons, and the application was dismissed.

Spencer for applicant. Marshall for mortgagee. Macdonell for assignee.