

The Court—I think I understand; perhaps I am wrong. The alleged apex is contained within the limits of the said (preliminary motion) alleged Centre Star mineral claim. Well, you deny that?

Mr. Bodwell—Yes, sir.

The Court (resuming the reading)—“then the plaintiffs say that the Iron Mask mineral claim is a prior location.”

Mr. Bodwell—“On the dip” under the act of 1891.

The Court—On the dip itself?

Mr. Bodwell—Yes, sir; Your Lordship will remember that the act of 1891 changed the Mineral Act and provided that the prior locator on the dip should have a priority over a subsequent locator on the apex of the same vein, that is, if there were no adjoining owners.

The Court—I understand, that is to say, if they then had the apex on their ground, still, if the adjoining locator first got to the vein by reason of the dip, that he would have a prior claim?

Mr. Bodwell—That is it.

The Court—That is in case he met it or intersected it.

Mr. Bodwell—He would have the vein all the way down, because he was a prior locator on the dip.

The Court—All the way, but not into the adjoining ground. He would have the vein all the way down from where he intersected the dip.

Mr. Bodwell—Yes, he would have his own vein to that point.

The Court—He would have his vein down, from that point—not down to that point—but down from that point?

Mr. Bodwell—We are really getting beyond the point for the purpose of this amendment. My Lord. All we want to show is that their location—in fact we have been allowed to plead that—the plea which Your Lordship has just read has been already made. We have been allowed to state that their location is a location dating from the (preliminary motion) 7th of July, 1891, and not from the 7th of July, 1890, and that we come within the provisions of the amendment of the law, which took place in 1891, and, being the prior locator on the dip we have all of the rights which flow from that, whatever they may be.

The Court—Mr. Bodwell, as a matter of information to me, did the act require, for instance, your people to strike the dip? I mean to strike the dip by sinking?

Mr. Bodwell—No; I don't say the act required anything about it at all; but if this state of facts were proved, that upon one claim a man had an apex of the vein and sinking on that vein he intersected another on an adjoining claim, if he had the prior location, would have priority because he was on the dip before the other man was on the apex.

The Court—I understand you; you mean whether he sunk on it or not.

Mr. Bodwell—That would be the point exactly.

The Court—I understand you.

Mr. Bodwell—The facts as set out there are not exactly as they will appear in the evidence, and I seek to make an amendment which will confirm the statement in the pleadings to the facts as they will be proven, and if Your Lordship will look at that plea which is drawn there and the b. d., you will see the difference. The difference is just this, in a word: The amendment that has been allowed states that after 1891 Bourgeois and Morris became partners. As a matter of fact, they were partners in the year 1890,

before they discovered or located any of the claims in question. Bourgeois and Morris entered into a partnership, under the terms of which it was arranged that they should (preliminary motion 11) have a joint interest in every claim which either one of them discovered or which was recorded or located in their joint names, or in the names of either one of them separately. That arrangement continued down to and past the year 1891; in fact, down to the time when the Centre Star claim was sold to Durant and Larbet, who are the predecessors of the Centre Star Company.

The Court—Mr. Bodwell, which was the prior location? I forget.

Mr. Bodwell—It is alleged that the Centre Star is the prior location. The Centre Star has the prior record. The amendment that I now wish to make is in these words:

“The plaintiffs further say that prior to the month of July, 1890, and prior to the date of the discovery, location or record of any of the mineral claims herein-after mentioned, one Joseph Bourgeois and one Joseph Morris entered into an agreement by which it was stipulated that they should prospect together for mineral claims, and should be joint owners of any and all mineral claims discovered by them, or either of them, or located or recorded in their or either of their names. In pursuance of the said agreement the said Bourgeois and Morris, during the summer of 1890, prospected together in the district in which the claims in question in this action are situated, and while so prospecting discovered a certain mineral claim, which was recorded on the 7th day of July, 1890, in the name of the said Joseph Bourgeois as the Centre Star mineral claim (which said mineral claim is alleged by the defendants to be the Centre Star mineral claim, in question in this action). The said Bourgeois and Morris, about the same time also located and recorded a number of other mineral claims in the neighbourhood of the said Centre Star (preliminary motion 13) mineral claim, and were and continued to be joint owners of all the mineral claims discovered by them in the said district and recorded in their or either of their names. On the 7th day of July, 1891, the said Bourgeois and Morris procured the said Centre Star and the said other mineral claims to be re-recorded, in the joint names of the said Bourgeois and Morris, in order that their joint ownership in the said claims, which still continued, might appear on the records of the office of the mining recorder for the district in which the said claims were situated. And the plaintiffs say that the said re-record of the said Centre Star mineral claim amounted in law to an abandonment of the said claim, recorded on the 7th day of July, 1890, and that the title of the defendants, if any, to the said alleged Centre Star mineral claim is based upon the said record of the said claims made in the joint names of the said Bourgeois and Morris on the 7th day of July, 1891, and if it shall be proved—which the plaintiffs deny—that the said alleged apex of the said alleged vein is on grounds contained within the limits of the said alleged Centre Star mineral claim, that the plaintiffs say that the Iron Mask mineral claim is a prior location on the dip of the said alleged vein, if any, and the plaintiffs claim the benefit of the provisions of section 21 of the Mineral Act, 1891.”

That is the way in which we wish that paragraph to read. Now, we seek to add another paragraph which carries out the same line and shows this, that