

to the fact that there are disputes arising, so far as the pleadings show on both sides of this natural fault or vertical dyke, the one which comes down here. The injunction does not apply to that. We never tried to cross the vertical dyke, but a large portion of the damages are involved in the west side, what we may call the west side, and right outside of the claim for damages which arises on the west side, is entirely on the east side of that dyke, and I will speak of the two sides as the west side and the east side.

The Court—I suppose there had been ore taken out of No. 3 shaft.

Mr. Davis—Well, they say there is no vein there, so I do not suppose they will attach any very great importance to the ore taken out of that shaft. On the west side there was some ore taken by Durant, the manager of the Centre Star Company, as we have admitted in the statement at station 66. That is the point I have my stick on at the present time, and that is the only point in dispute here so far as the west side is concerned. Because, so far as following the vein down is concerned, we are not trying—have not tried—to cross the vertical dyke—are not trying to. We may in the future, probably will, follow down from the War Eagle because this vein, the north fork of the War Eagle, runs over into War Eagle ground, and we will come down from that side and therefore will not raise any question about the effect of the large vertical dyke. So far as the damages are concerned for the ore that we have taken from station 66, our witnesses have examined that ground carefully—have examined where that ore was taken from, and they have given it to us as their opinion that that ore under no circumstances came from the Centre Star mine. That is their opinion that that ore came from the undisputed Iron Mask vein and when they are on the witness stand they will frankly and candidly tell your Lordship that that is the opinion which they arrived at so that so far as the west side is concerned we can put it out of the question altogether in this action. The only claim with reference to that being as to this ore which was taken, which on examination we find to be ore which belongs, in their opinion, to the Iron Mask. Of course, if more development work was done there might be some question, but at the present stage they are not willing to go on the witness stand and say that they think that ore did not come from the Iron Mask vein, so that that cuts the west side out of the case.

The Court—Has this ore been preserved?

Mr. Davis—There are four or five car loads which were taken from there, and we have given the other side a statement of the amount of value of that ore, which we read to your Lordship a moment ago.

The Court—But it is all preserved, is it?

Mr. Davis—Oh, it has gone to the smelter.

The Court—I suppose specimens were kept of it?

Mr. Davis—We have given him a statement of the smelter returns; there will be no dispute about that part of it we think. We do not want any of their ore, if it is their ore. This is a very trifling part of this action. The main question in issue—the only question we are interested in—is the question of whether or not, as I said before, we have a vein with an apex in Centre Star ground, which passes down from the Centre Star ground into Iron Mask ground, which continues on down in an unbroken sheet and is not cut off or has not its continuity destroyed by this so-called flat fault. That is the thing which is of importance.

Mr. Bodwell—You do not go west of it?

Mr. Davis—So far as this action is concerned, we are not concerned with, and shall not put in evidence respecting the west side of the fault. As I said before, the only claim is the question of damage at point 66, and we have satisfied ourselves that the ore which was taken from 66 came from the Iron Mask vein and so far as following down on the vein itself, that may be a question for the War Eagle in the future, but we are not raising it here.

The Court—You concede, Mr. Davis, then, as to the damages with respect to that ore taken from the west side of the vertical fault. You throw up?

Mr. Davis—Yes, my Lord.

The Court—You surrender what you got?

Mr. Davis—Yes, we are not here to try to prove anything which we do not fairly believe to be so, and our witnesses have satisfied themselves with reference to that. There has been, I might say, a great deal more development work done there by Iron Mask people, which throws a great deal more light on the subject, puts it in a very different position from what it was at the time Durant took the ore. Of course, he took it honestly enough, fully believing that it belonged to the Centre Star vein; and I might say just here that so far as these damages are concerned, the defendants Gooderham and Blackstock have nothing whatever to do with it. We committed no trespass, as your Lordship will remember, looking back at the evidence which my learned friend has put in. There was no evidence whatever that Gooderham and Blackstock have been guilty of any trespass. Whatever trespass took place, if any, took place prior to Gooderham and Blackstock's purchase, and we are on the part of the Centre Star Company. I might say that Gooderham and Blackstock purchased pending the litigation—they bought this last summer. They added by counsel, because, in the first place, my learned friend wished to have them bound by the injunction as it stood, and in the second place, because we wished to be in a position to have that injunction removed, and to be able to go on down this inclined shaft in the winze, in other words, follow our vein down here on its dip as we claim we are entitled to do under the law.

Now that statement clears the way this far. It shows that the fight in the present case is all as to whether or not we have a vein between No. 2 and No. 3, and whether that vein is cut off by the alleged flat fault. It is a very simple proposition, and the evidence will, I think, be very clear on that point to your Lordship. I will give your Lordship a slight sketch of what the evidence will be. We shall prove in the first place by all our witnesses that between No. 2 and No. 3 shafts there is an apex practically continuous, that there is an apex not merely of iron cap as has been suggested, but an apex on the surface, that is an out-crop, showing iron pyrites and chalcopyrrhotite on apex or out-cropping, in short, such is very seldom found in this camp, a broad apex, showing conclusively a broad vein. How broad, of course, cannot be told from the out-cropping itself, because it does not run back to the walls, that is, the exterior walls of the vein. We will prove that apex beyond all question. I think I am perfectly safe in saying that. In the next place we will prove that the vein in the inclined shaft following down from the apex 320 feet to the cross fissure, which has been called the flat fault is continuous beyond all question.

(To be continued.)