

IN THE SUPREME COURT OF BRITISH COLUMBIA.

Before Mr. Justice Walkem.

BETWEEN :

The Iron Mask Gold Mining Company
(Foreign) - - - - Plaintiffs,

AND

The Centre Star Mining and Smelting
Company (Foreign), George Gooderham and Thos. Gibbs Blackstock - Defendants.

Rossland, B.C., April 17, 1899.

The Registrar—The only case on the docket that I know of is between the Iron Mask Gold Mining Company (Foreign) and the Centre Star Mining and Smelting Company (Foreign).

The Court—Are there any appearances for the respective parties?

Mr. E. V. Bodwell—Your Lordship, I appear in the case on behalf of the plaintiffs, as does also my friend Mr. A. H. Macneil.

Mr. A. P. Davis—Mr. A. C. Galt and I appear for the defendants.

The Court—I understand that you are not going to open the case now. I suggest this, that the case be called and regularly opened, and if you want an adjournment, that the main trial be adjourned to such day as you may agree to.

Mr. Bodwell—Yes, My Lord, there are two motions here, notice of which has been given, and my friend Mr. Davis and I thought it would be convenient, subject to Your Lordship's direction on the point, to dispose of these motions to-day and then adjourn the formal opening of the case, that is, the beginning of the evidence, until Tuesday next.

The Court—Suppose we call this the beginning of the case.

Mr. Bodwell—These motions are, of course, a part of the case. The case, I understand, is now open, and these motions are made. After these motions are disposed of, then we have arranged to commence taking evidence.

The Court—I will hear the motions just stated now. What motion is it?

Mr. Bodwell—I have a motion, and my friend, Mr. Davis, has a motion. We have a motion to amend the pleadings, Your Lordship.

Your Lordship will remember the form in which the pleadings were originally framed. The plaintiffs' statement of claim was a statement that they were the owners of a certain mineral claim, and that the defendants had trespassed on that mineral claim and taken ore therefrom. The defendants pleaded in defence to that, that they had a mineral claim and extra-lateral right. But a short time ago, in fact within the last three weeks, certain information came into our possession and upon that information we founded an application to amend the pleadings which were heard and disposed of in Victoria, and certain amendments to the statement of reply were allowed. I think perhaps I had better refer Your Lordship to the amendments now. They are paragraphs 1a, 1b, 1c, 1d, and 1e.

The Court—Who was the Judge?

Mr. Bodwell—Mr. Justice Martin.

The amendment which we ask for now is in the same line, and practically raises a similar issue to that which has been already allowed. In fact, the

first amendment which we (preliminary motion of plaintiffs) ask does not change in any way the substance of the amendment of paragraph 1b, except that it states the facts exactly as the evidence will disclose them. At the time we made this amendment we were not fully instructed upon the facts as we are at present, and it is necessary, I think.

The Court—Does this extend the effect of 1b, that you are applying now to amend?

Mr. Bodwell—To amend 1b to conform to the evidence, as we expect it will be adduced.

The Court—I suppose I had better read it and see what it is. (The Court reads the affidavit). The papers show that, "On the 7th day of July, 1890, one Bourgeois purported to record a claim called the Centre Star mineral claim. At the date of such record the said Bourgeois and one Morris were partners or joint owners of such Centre Star mineral claim, and in the year 1891 an arrangement was entered into between the said Bourgeois and Morris whereby they agreed that their interests in the said claims should be shown upon the record thereof in the mining recorder's office, and accordingly the said Bourgeois abandoned his former record,"—this was not in the pleadings before, at all?

Mr. Bodwell—No; this was an amendment which was allowed.

The Court—I do not recollect Bourgeois name in it.

Mr. Bodwell—No; it was all discovered within the last three weeks.

The Court (resuming the reading)—"and accordingly the said Bourgeois abandoned his former record of the said alleged Centre Star mineral claim." Bourgeois and Morris were Centre Star locators, I suppose. Preliminary motion?

Mr. Bodwell—That is the case we want to show now.

The Court (resuming the reading)—"and on the 7th day of July, 1891, re-recorded the said claim, and the said other claim in the name of himself and the said Morris, and the plaintiffs say that the title of the defendants, if any, to the said alleged Centre Star mineral claim is based upon the said record of the 7th day of July." That is, of their joint record, 1891?

Mr. Bodwell—Yes, sir.

The Court (resuming the reading)—"and that if it shall be proved—which the plaintiffs deny—that the said alleged apex of the said alleged vein is on ground contained within the limits of the said alleged Centre Star mineral claim."

Mr. Bodwell—If they prove an apex, we say their claim dates from the record of 7th day of July, 1891.

The Court—If the Centre Star proves it. What you want to show is, first, the location on that?

Mr. Bodwell—Yes, sir.

The Court—And the record of Bourgeois and Morris, that being the origin of their title according to your statement.

Mr. Bodwell—Yes, sir.

The Court—"And that if it shall be proved—which the plaintiffs deny—then it is a question about their lines?"

Mr. Bodwell—I can explain it in a word now, I think.

The Court—In other words, the apex is in your ground?

Mr. Bodwell—No; that their title relates back to the 7th day of July, 1891; that follows from other pleas.