

1902.
November 17.

SUPREME
COURT OF
CANADA.

DAVIES, J.

MILLS, J.

Oaths Act (1) and rule 415 of the Supreme Court rules of 1890 of British Columbia cure the alleged defect.

The appeal should be allowed with costs in this court and in the Court of Appeal in British Columbia, and the case should be remitted back to the trial judge to complete the trial of the adverse action.

MILLS, J.:—This case arose from a controversy in respect to a mining claim in the Province of British Columbia. It is situated in the Ainsworth mining division of the province east of Duncan River and north of Dunn Creek.

One John Hastie, on the 15th day of June, 1898, recorded a mineral claim called the "Iron Chief," in the office of the mining recorder at Kaslo. On the 26th day of August, 1898, he transferred to one P. A. Paulson an undivided one-half interest in the said claim, and Paulson by a writing dated the 30th of June, 1899, transferred to the plaintiff this undivided one-half interest in the claim. John Hastie was a free miner of the Province of British Columbia, and so also was P. A. Paulson. On the 22nd of May, 1899, the plaintiff obtained from the mining recorder at Kaslo a certificate of work being done in compliance with the provisions of the Mineral Act for the year ending June the 15th of that year; and on the 15th of June, 1900, the plaintiff paid the mining recorder at Kaslo the sum of \$100.

The defendants claim to be the owners of 38.68 acres of the lands and minerals comprised within the said claim which they maintain was located by the defendant Hendrix on the 16th of May, 1899, and recorded at Kaslo on the 1st of June following, named the "Pearl" claim, which embraces 38.68 acres of the mineral claim comprised within the claim known as the "Iron Chief." The plaintiff affirms that they applied for a grant within sixty days after the publication in the British Columbia Gazette of the notice of the defendants that upwards of 38 acres of the said "Iron Chief" mineral claim was comprised in the "Pearl" claim previously located by them.

The plaintiff maintained that the "Pearl" claim has always been an invalid location. It was not marked by two legal posts placed as near as possible on the line of the ledge or vein of mineral; that Hendrix did not blaze or mark the line as required by the Mineral Act; that he did not place a discovery post on the said claim; that he did not furnish the mining recorder the particulars required to be put on posts Nos. 1 and 2; that he did not make affidavit that the legal notices and posts had been put on the claim, nor that the ground applied for was then unoccupied.

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