

action in time, but on the 5th of March, 1898, brought this action to set aside the certificate of improvements issued on the 10th of February, 1898, on the ground that the same was obtained by fraud.

*Held*, that an adverse claimant who neglects to take the remedy provided by s. 37 of the Mineral Act cannot sue to set aside a certificate of improvements on the ground of fraud. *Seemle*, that under such circumstances the Crown alone is entitled to sue.

*Martin*, Q.C., and *W. S. Deacon* for plaintiff. *J. A. Macdonald* for defendants.

Martin, J.]

[Dec. 19, 1899.

McDONALD v. CANADIAN PACIFIC EXPLORATION CO.  
*Inspection of Metalliferous Mines Act, R.S.B.C. (1897) c. 134, s. 25—*  
*Accident by falling rock—Duty of mine owner under Act.*

Action tried at Nelson before MARTIN, J., without a jury, for damages received by a miner in a mine. On behalf of the plaintiff it was contended that the air course in which he was set to work was not securely timbered, in consequence of which alleged negligence a mass of rock fell from the hanging wall upon his left foot and severely crushed it, causing injuries which resulted in the amputation of the greater part of the wounded member. Sec. 25, rule (20) of the Inspection of Metalliferous Mines Act provides that "Each shaft, incline, stope, tunnel, level or drift, and any working place in the mine to which this Act applies, shall be, when necessary, kept securely timbered or protected to prevent injury to any person from falling material;" and the operative words of sec. 25 are: "The following general rules shall, so far as may be reasonably practicable, be observed in every mine to which this Act applies."

*Held*, that the accident was caused by plaintiff's own carelessness, and further, that sec. 25 of the Inspection of Metalliferous Mines Act was not intended to impose unreasonable burdens upon the mine owner, and therefore he is only required to use reasonable precaution against accidents to the miners. Action dismissed.

*Macdonald*, Q.C., and *Johnson* for plaintiff. *MacNeill*, Q.C., for defendant.

Martin, J.]

TRAVES v. CITY OF NELSON.

[Dec. 21, 1899.

*Municipal law—Revising by-law—Printed roll not attested by mayor and city clerk at time of passage of by-law—Proceedings by municipality under a by-law not quashed—Municipal Clauses Act, R.S.B.C. (1897), c. 144, ss. 91, 92—Certiorari—Validity of by-law may be determined by.*

Action for an injunction to prevent the defendant corporation from pulling down and removing a building within the fire limits as defined by by-law No. 7 of the revised by-laws of the City of Nelson, and for damages.

*Held*, Where a revising by-law purports to bring into effect a number of by-laws contained in a printed roll alleged to be attested by the mayor