

aware that other parties were interested in the land who should have been served with notice, and this was error in point of fact. Order for cancellation of certificate of title and payment of costs by the holder of the certificate, who had opposed the application.

Metcalf, for District Registrar. *Howell*, Q.C., for Buchanan.

Province of British Columbia.

SUPREME COURT.

Martin, J.]

CALLAHAN v. COPLEN.

[April 17.

Mineral claim—Location of posts—Points of compass—Defective marking—Waiver—Priority.

MARTIN, J.—On the 24th day of May, 1892, the defendant located, and subsequently recorded, the Cube Lode mineral claim on the divide between Cody and Sandon creeks in the Slocan mining district. Over four years afterwards the plaintiff located, on August 3rd, 1896, the Cody Fraction mineral claim, and on the 27th of September, 1896, the Joker Fraction mineral claim, and duly recorded them. The Cube Lode claim as now surveyed, would occupy most of the ground claimed as that of the Cody and Joker Fractions. It is contended on behalf of the plaintiff, first, that the present situation of the Cube Lode is not according to its original location, or, in other words, the defendant has fraudulently "swung" the posts of the Cube Lode so as to place it practically on the wrong (eastern) side of the divide. This, of course, is an allegation of a very serious character, and to substantiate it I must be satisfied beyond doubt that the defendant has deliberately committed what is tantamount to a criminal offence. In view of the positive assertion of the defendant that the location line at the top of the divide, which the plaintiff took to be that of the Cube Lode, was really that of the Summit claim, also located by the defendant on the same day as the Cube Lode, and that someone has changed the name of the claim and the name of the locator, and the corroborative testimony as to the original location of the Cube Lode, I feel I would not be justified in giving prepondering weight to the evidence offered on behalf of the plaintiff on this point, though without explanation it was a strong case of circumstantial evidence. I might say here that it was a pleasant feature of this case that I had no reason to believe from anything in the demeanor of the principal parties concerned that there was any intention to deceive the Court, or that anything other than a straight story was being told; there is practically no direct conflict of evidence. Second, the plaintiff contends that in any event the present location of the Cube Lode is invalid, because