

ROSE, J.

DECEMBER 12TH, 1919.

M. J. O'BRIEN LIMITED v. LA ROSE MINES LIMITED.

Mines and Mining—Boundaries of Mining Location—Evidence—Survey—Mines Act, R.S.O. 1897 ch. 36, secs. 26, 27—Surveys Act, R.S.O. 1897 ch. 181, secs. 17, 18, 19—Finding of Fact of Trial Judge.

Action for a declaration that the eastern limit of the plaintiffs' land, known as "Mining Location R.L. 403," was a certain irregular line described in the statement of claim; for an injunction restraining the defendants from trespassing upon and carrying away ore from the land lying to the west of such line; for an account of all ore removed from and all damage done to the land; and for other relief. That the defendants had been mining to the west of the line mentioned was not disputed—the dispute was as to whether or not that line was the true eastern boundary of the plaintiffs' land.

The action was tried without a jury at a Toronto sittings. W. N. Tilley, K.C., and R. H. Parmenter, for the plaintiffs. R. S. Robertson and G. H. Sedgewick, for the defendants.

ROSE, J., in a written judgment, said that the lands of the plaintiffs and of the defendants were in the township of Coleman. In 1903, the territory which forms that township was still unsurveyed, and Robert Laird, an Ontario Land Surveyor, now deceased, was retained to survey certain mining locations in such territory. This retainer was pursuant to the requirements of the Mines Act then in force, R.S.O. 1897 ch. 36. Sections 26 and 27 of that Act referred to; also Carrick v. Johnston (1866), 26 U.C.R. 69; and the Surveys Act, R.S.O. 1897 ch. 181, secs. 17, 18, 19.

After reviewing the evidence, the learned Judge said that, whatever might be the true western boundary of the defendants' land, the plaintiffs had failed to prove their title to the land in question, and their action failed. He was not called upon to say, and the evidence did not enable him to say, where the eastern boundary of the plaintiffs' property really was.

It was unnecessary to consider the evidence adduced by the defendants in support of their plea of estoppel.

Action dismissed with costs.