

a plan properly made by one presumably competent to make it, namely, a land surveyor. The filing of the adverse writ and the affidavit and plan proved nothing and settled nothing. They simply shewed to the mining recorder the particular claim the plaintiff was making so far as the claim he was adverseing or contesting was concerned, and obliged the mining recorder to stay his hand and withhold from the defendants whose claim was being adverseed or contested, the certificate of improvements he was demanding under the thirty-sixth section of the same Act.

1902.
November 17.
SUPREME
COURT OF
CANADA.
DAVIES, J.

These papers, then, amounted to nothing more than a caveat which stayed the recorder's hands until judgment in the adverse suit was delivered and filed with him. All this, I think, is quite clear from an examination of the two sections.

It is not necessary to set out the section at length. Its material words, so far as this controversy is concerned, are contained in the amendment of the year 1898. Previous to that amendment, if any person desired to "adverse" or contest a claim being made by any miner for a certificate of improvements, which was practically the equivalent of a Crown grant and could only be impeached for fraud, he had, within certain prescribed times, to begin an action in the Supreme Court of British Columbia and file a copy of the writ in the action with the mining recorder of the district. The amendment required that he should also

file an affidavit to be made by the person asserting the adverse claim and setting forth the nature, boundaries, and extent of such adverse claim, together with a map or plan thereof signed by a provincial land surveyor, and a copy of the writ, etc.

The section says nothing about an actual survey being made, while the previous section, where it was necessary to deal with the question of survey for the purposes of Crown grants, most clearly requires an actual survey and sets out in detail how it shall be made. The affidavit of the boundaries is not required from the surveyor, but from the adverse claimant himself. To yield to the argument of the respondent, we would require to import into the section language which the Legislature has not used, and impute to it an intention which I do not think it had.

With regard to the absence of the date from the jurat, I do not think that defect a fatal one. The test as to whether or not it is an affidavit is whether an indictment for perjury would lie upon it. The authorities are clear that it would, and evidence as to the time when it was sworn would be admissible *aliunde*.

Even if the absence of the date were a fatal defect at common law in an affidavit, which I controvert, I think that The British Columbia