1902.
November 17.

SUPREME COURT OF CANADA.

TASCHEREAU, J., dissenting.

if the appellant's contention prevailed. An order from the Court to a surveyor to make a plan of certain premises necessarily implies, it seems to me, that the surveyor must make that plan from actual survey or personal inspection of the premises. I would think that this enactment implies the same thing.

I utterly fail to see why the intervention of a surveyor is at all required by the statute, if all that he has to do is to copy one of the parties' sketches and sign it. That sketch would have been as good for the purposes of the statute, without the surveyor's re-copy and signature. When the statute requires a plan made by the surveyor it must mean that the surveyor must make an actual survey. Otherwise his intervention would be futile.

I would dismiss the appeal with costs.

SEDGEWICK, J. SEDGEWICK, J., concurred in the judgment allowing the appeal for the reasons stated by His Lordship Mr. Justice DAVIES.

GIROUARD, J. GIROUARD, J.:—This appeal should be allowed with costs for the reasons given by Chief Justice HUNTER.

DAVIES, J. DAVIES, J.:—Two questions only were argued on this appeal, and both arise out of the proper construction to be given to the thirty-seventh section of the Mineral Act, ch. 135, R. S. B. C. (1897), as amended by sec. 9 of ch. 33 of the statutes of 1898.

The respondents (defendants in the action), contend (1) that under the above section it is necessary for the plaintiff bringing the adverse suit or proceedings to file with the mining recorder a map or plan made by a provincial land surveyor and based upon a prior and actual survey made by him; (2) that the jurat of the adverse affidavit filed with the recorder along with the plan not having been dated makes the affidavit bad, and there has therefore been no compliance with the statute.

The learned Judges in the Courts below were equally divided in opinion, the Chief Justice, who held that a previous personal survey by the land surveyor who made the plan was not necessary, and that the absence of a date in the affidavit was not fatal, agreeing with Mr. Justice MARTIN, who had tried the adverse action, on both points, while Mr. Justice IRVING and Mr. Justice WALKEM held that a previous personal survey was necessary to make the plan a compliance with the statutory requirements.

I concur in the judgment of the learned Chief Justice and think, for the reasons given by him, that this appeal should be allowed. I think it is clear from the wording of the section itself and from the object the Legislature evidently had in view, that no previous actual survey by the land surveyor was contemplated, but only the filing of