First—That as a matter of fact, he had already gathered up and appropriated to his own use the said pieces of so-called "float" between the time of the location of his own claim on July 9th, and the plaintiff's location on September 7th, and therefore he cannot be called upon to account to the plaintiff therefor; and further, that any detached fragments of gold-bearing quartz which were lying on the portion of the claim in question when and after the Shamrock was located, had been broken or blasted out of the "Big Showing" by the defendant, and therefore were his own property as coming from his lead.

Second—He alternatively contends that if these issues of fact be found against him he justifies his action in taking the said fragments, is justifiable, as being in pursuance of his legal rights as a lode owner.

It, therefore, becomes necessary to first determine the questions of fact, for however interesting the legal question may be, it would be unprofitable and undesirable to go into it if the facts were found to exclude its application to the present case.

Now assuming that this float, so-called, could have been taken by the placer owner, the onus is on him, the plaintiff, to prove (1) that it was at the time he located his claim within the limits thereof, and (2) that it was the defendant who wrongfully converted it to his own use. The evidence to support such a charge should be precise and clear both as to time, place, and amount, but not only was the plaintiff most vague and loose in his statements, but was wholly unsupported by other evidence, or by any measurements whatever, though the importance of them has been repeatedly pointed out by this Court: see Bleeker v. Chisholm (1896) 1 M. M. C., 112; Waterhouse v. Liftchild (1897), Ib., 153; and Dunlop v. Haney (1899), Ib. 369. In none of those cases were measurements more necessary than in the present where the plaintiff's lack of knowledge of the position of his own claim as regards the "Big Showing" and the place where the trespass complained of must have occurred, if at all, is so astonishing that he actually contended his location excluded all of the "Big Showing" except the top corner (see his sketch in red on Ex. T. 12) whereas the survey directed by the Court shows that it really included the whole of it. So striking an error is so important a point of the case, taken in conjunction with the way in which the plaintiff is flatly contradicted by several other witnesses, renders it impossible for me to place any reliance upon his statements, and even on his own evidence, unsupported, I should hesitate long before giving judgment in his favour for any amount, however small. But the defendant Morgan, contradicts him and says that all the quartz he picked up after the 7th of September—the date of the location of the Shamrock—was what came from his own workings in breaking down and blasting out the "Big Showing," in the doing of which fragments of quartz were shot out to a considerable distance from and below that point. In the face of this denial I find it impossible to hold that the defendant has taken anything the plaintiff would be entitled to, even if his contention regarding the float were correct, and it therefore becomes unnecessary to discuss the legal point above mentioned, which should it arise again, will doubtless be disposed of to better advantage than in this case where more evidence from placer miners of experience should have been forthcoming to assist the Court in coming to a proper conclusion.

I have not overlooked the fact that the plaintiff also contends that in addition to said float there were boulders of quartz scattered about that undefined portion of the ground which is in dispute near the "Big Showing," and which he claims as carrying gold and as appertaining to his claim. These, he says, the defendant took and prevented him from taking, and he asserts that it was one of these small boulders that he had broken and was breaking up when he was arrested. But the broken rock produced in Court does not answer his description, and he seeks to meet this discrepancy by alleging that the rock now produced has been fraudulently changed for that which he was taking off his claim. It is sufficient to say that this story is rejected, and it only serves to show what little credence can be placed upon the plaintiff's veracity. In such circumstances it would be idle and profitless to consider further his right to these boulders, for there is nothing to satisfy me that they carry any gold value whatever, or are of any value to miners, placer or lode. Whatever they may be, they do not, on the evidence so far, appertain to the placer claim more than to the lode claim. If it is deemed desirable or worth while to test their ownership, some definite evidence, accompanied by the result of tests, should be offered, so that the Court could have something certain to found its judgment upon, and not mere vague statements and loose and extravagant assertions which result in nothing except confusion.

The plaintiff asks that the defendant Morgan should be restrained from interfering with or preventing his working his claim. This branch of the case is clear, and there is no doubt that the defendant has acted in an illegal manner, and obstructed the plaintiff in the exercise of his lawful rights, in the belief that his location was an invalid one. It may be that there is no placer gold on the plaintiff's claim, and that he is simply wasting his time and money in endeavouring to work it, but since he has a valid claim he is entitled to work it as he pleases, subject to the restrictions imposed by the Act. There will consequently be judgment in the plaintiff's favour on this branch, and an injunction as prayed restraining the defendant Morgan, his servants or agents, from interfering with the plaintiff in the lawful working of his claim.

The plaintiff on the whole case is entitled to the costs of the action against the defendant Morgan, less any extra costs which may have been incurred in defending the issue on which he has been unsuccessful, viz: the wrongful conversion.

During the trial the action was dismissed with costs as against the Great Northern Mines, Limited, no case being made out against the company.

Finally, I draw attention to the expense and delay that have been caused by the neglect of either party to take measurements or prepare a plan: in cases of this nature the practice should always be adopted, otherwise the examination of witnesses is rendered difficult and uncertain, and additional expense and delay are incurred by undue prolongation of the trial.

April 2nd, 1904.

Dumas Gold Mines, Ltd., v. Boultbee et al.

(Judgment of the Honourable Mr. Justice Martin.)

According to the issue as amended pursuant to the principle laid down in Bryce v. Kinnee (1892), 14 Prac. R., 509, the question to be determined is, does the defendants' execution against Gilbert Pellent prevail against the claim of the plaintiff company, "or of its predecessor in title E. M. Pellent," to the undivided half interest of the said Gilbert Pellent in the mineral claims mentioned in the issue?

The chain of title set up by the company is through a bill of sale (for the consideration of $500), from said Gilbert Pellent of his half interest to E. M. Pellent, the company's predecessor in title, dated 23rd of February, 1903, and it is admitted that this document was not recorded till the 22nd of May, 1903, and that in the meantime the sheriff had seized under the defendants' execution, on the 18th of May, 1903.

Gilbert Pellent was in the Yukon Territory, at Dawson, at the time, over two thousand miles from the mining recorder's office having jurisdiction over the claims in question, and it is contended that by the operation of Secs. 19 and 40, he or his transferees had some 215 days within which to record the instrument, on the assumption that, like a locator, one who wishes to record an instrument should be allowed one day for every ten miles of distance he who executes it may happen at the time to be from the recorder's office. This is an ingenious but clearly fallacious argument. Section 40 says that conveyances, etc., "shall be recorded within the time prescribed for recording mineral claims," and that prescribed time is fixed by Section 19 as dependent upon the distance from the claim to the recorder's office, not of the locator himself therefrom. It is a fixed geographical and not a shifting personal distance that is contemplated by the Statute, and it would be unreasonable to hold that the transferee of a bill of sale of a mineral claim would have more time to record that instrument than the free miner would have originally had to record the claim itself.

Such being the case, the bill of sale relied upon has not been duly recorded, and is of no effect as against the defendants' intervening execution.

It is admitted by Croteau, an unreliable witness, that the company had actual notice of the seizure before it took the bill of sale of May 26th, 1903, from E. M. Pellent; and in any event I cannot see how it is aided by that document. I further find, if it is material, that Croteau knew of the