REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

B.C.] [Feb. 12.

BYRON N. WHITE CO. *v.* STAR MINING CO.

Mines and mining—Apex location—Exploitation of vein—Continuity—Extralateral workings—Encroachment—Trespass—Onus of proof.

To justify an encroachment in the exercise of the right, under the British Columbia Mineral Act, 1891, 54 Vict. c. 25, of following and exploiting a mineral vein extralaterally beyond the vertical plane of the side-line of the location within which it has its apex, the owner of the apex must prove the continuity of the vein from such apex to his extralateral workings. In the present case, as the appellants failed to discharge the onus thus resting upon them, the judgment appealed from, 13 B.C. Rep. 234, was affirmed. Appeal dismissed with costs.

Bodwell, K.C., and *Lennie*, for appellant. *S. S. Taylor*, K.C., for respondent.

B.C.] VAUGHAN *v.* EASTERN TOWNSHIPS BANK. [Feb. 12.

Irrigation—Rivers and streams—Pre-emption of agricultural lands—Water records — Appurtenances — Abandonment of pre-emption—Lapse of water record.

Where holders of separate pre-emptions of agricultural lands, under the provisions of the Land Act, 1884, 47 Vict. c. 16 (B.C.), and the amendment thereof, 49 Vict. c. 10 (B.C.), with the object of vesting their respective pre-emptions in themselves as partners, surrendered the separate pre-emptions to the Crown, and, on the same day, re-located the same areas as partners, obtaining a pre-emption record thereof in their joint names, the joint water record previously granted to them, as partners, in connection with their separate pre-emptions, cannot be considered to have been abandoned. The effect of the transaction caused the areas to become unoccupied lands of the Crown, within the