

deliberately order the trial to be called for that purpose, because I knew nothing, and I could not forestall what your argument was, but I would be really in the position, I think, of saying very properly to both of you, that this is really the trial, only it is interrupted by this motion as a preliminary one.

Mr. Davis—Certainly. Our notice of motion is at the trial. I could not have brought it out.

The Court—Mr. Davis, Mr. Bodwell goes a little further than that, and I do not say that he is not right; I do not say that he is, for that matter, and that is the reason I want to look at the judgment. Apparently, the view taken by the Full Court, as expressed by Mr. Justice Drake, was that this matter was, how one in the face of all these affidavits, they were not in a judgment is right—and what he has read would appear to bear him out—but the Judge who tries this case will have a better opportunity than they would have, as the case goes on. He will be in a position to say whether he wants more information or not, and if he wants it in this particular shape, we say that he has the jurisdiction to order it. That is what Mr. Bodwell, as I understand, contends; and what I want to say is, whether his views of the judgment are borne out—and I can't see for the life of me that you would be injured, even if I took his views for the present—I have very strong views about this, and I think there is justice and fair play to support them, but I should want to be fortified when the question comes up with some further cases than that one American case on exploration. I know there are more.

Mr. Davis—No, not reported. It is a matter of practice only. As a matter of course, they are not reported.

Mr. Bodwell—I want to make reference to a quotation of my friend on the case in *Barringer vs. Adams*. What he read from that is this: "That pending the trial, work of exploration on the vein in dispute will not be stopped, not by injunction, but there is work by the owner on his own ground."

Mr. Davis—Oh, no.

The Court—No, no; it could not happen that way, Mr. Bodwell. No, it is for the purposes of exploration only.

Mr. Bodwell—I know I am right about this: "And injunction will not issue in such a case when neither the bill nor the proofs fix the point where the defendant must stop, hence the Court will not, in terms, enjoin them from working a vein in the complainants' ground."

The Court—That is Bill in Equity.

Mr. Bodwell (resuming the reading)—"For demand of this would require the defendants to ascertain from what acts they are enjoined, nor will the working of disputed veins for purposes of exploration only be enjoined." Now what was the application in the *St. Louis and Montana* cases? (Reading):

"When this title is in dispute, whether legal or equitable, an interlocutory injunction will be granted, restraining the mining of valuable ores pending its determination." Who is the man that mines the ore? The man that is in possession of the ground upon which an extra-lateral right is claimed. Now following upon that he says this: "An injunction will not issue in such a case, when neither the bill nor the

proofs fix the point where the defendants must stop, hence the Court will not in terms enjoin them from working any vein in complainant's claim, for this would require the defendants to ascertain from what acts they are enjoined. Nor will the working of disputed veins for purposes of exploration be enjoined."

Mr. Davis—That is a general statement.

Mr. Bodwell—What case was that cited in support of that—*Bluebird and Murray*.

Mr. Davis—The *Bluebird and Murray* does not refer to it; it is another case altogether. My learned friend should not misstate the facts. This is merely a statement of what was held in a certain case.

Mr. Bodwell—If the *St. Louis and Montana Mining Company* bear my friend out, then I will take it back, but at present I am only able to read this in the way in which it occurs from the language used, and in the only case which I have found or have been cited to on that point, and that is in the *Bluebird and Murray* case. In that case what the parties seeking to enforce extra lateral-rights there sought to do was to stop the man disputing that extra-lateral right from working the ore upon his own ground.

The Court—Yes; that was it.

Mr. Davis—That is not this case, and there is nothing here to show it. Of course, it is all right for my friend to exercise his own imagination. He can introduce any number of cases.

Mr. Bodwell—And my friend, Mr. Duff, says—and he cited the *St. Louis mining and smelting* case—that that was not an extra-lateral right case at all.

The Court—I was going to ask that.

Mr. Davis—Dr. Raymond was a witness in that case, and he says it was an extra-lateral right case.

Mr. Bodwell—We will get the case. But, however, that point does not cut very much figure. That case is cited in 5 Fed.

The Court—Wait until you get the case. I was going to ask a question, whether it was an extra-lateral right case, because there might have been two locators disputing about the same ground?

Mr. Bodwell—I know the only other case—58 Fed. I think I have it here.

The Court—That is the only other point you wanted to raise, is it?

Mr. Bodwell—Yes; I did want to speak of another fact. At the time the matter was before the Full Court the defendants had their counter-claim, in which they claimed this intersection of ores and so on, and they have withdrawn that under leave of the Court, so that whatever figure that might cut in the case—

(To be Continued.)

AERIAL TRAMWAY IN THE SLOCAN.

IN a former issue Mr. B. C. Riblet, the well-known mining engineer, of Sandon, contributed an article, of a general character, to this periodical, on the subject of aerial tramways in West Kootenay. We are again indebted to him for the excellent photographs here reproduced, of tramways of the Finlayson type, in operation at the Noble Five mine. These tramways are of the double rope type, and are designed for long distance carriage and large capacity. The buckets,