

Judgment for redemption of the lands in the usual form with costs to the plaintiff of an ordinary redemption suit.

Baker, for plaintiff. *Marlatt*, for defendant.

Province of British Columbia.

SUPREME COURT.

Full Court.]

TANGHE v. MORGAN.

[Nov. 11, 1904.]

Mining law—Location of placer claim over lode claim—Essentials of a placer location—Application and declaration—Belief—Gold Commissioner—Powers of—Appeal—Pleadings—Issue not raised in court below.

Appeal from judgment of MARTIN, J.

Held, 1. A placer claim may be located on a lode claim.

2. A Gold Commissioner has no authority to change the entire location of a placer claim and an order to that effect made by him is null and void.

3. Where it is sought to sustain an appeal on an issue outside the record, on the ground that nevertheless it was an issue fought out in the course of the trial, it must, particularly in a charge of fraud, appear that the attention of the court and the adversary was directed to the fact that such an issue was being raised otherwise a waiver of the necessity for a formal pleading will not be assumed.

Per MARTIN, J., at the trial: 1. Upon a locator of a placer claim tendering to the proper officer the proper fee and documents, he is entitled to obtain a record for the claim and the officer has no discretion in the issuance thereof, and where the record is not granted to him in due course he shall, under the remedial provisions of section 19 of the Placer Mining Act, 1901, be deemed to have had such record issued to him at the time of his application therefor.

2. The validity of a placer mining record primarily depends upon the mere belief of the locator based upon indications he has observed on the claim in the existence of a deposit of placer gold thereon.

Decision of MARTIN, J., affirmed.

W. A. Macdonald, K.C., for appellant. *MacNeill*, K.C., for respondent.