

point, and these questions have no bearing on the issues between the parties, at all events at this stage of the proceedings, and that this is one of the cases in which as to these questions the proceeding by examination for discovery is being abused; that upon the whole the order appealed from should be varied by confining it to requiring defendant Cox to re-attend and submit to be examined as to the nature of the agreements which were entered into on behalf of the promotion syndicate with the companies; but that, if the plaintiff takes nothing by the further examination of defendant Cox, the costs of such further examination must be borne by plaintiff; that defendant Ryckman ought not to be required to answer as to the contents of the agreements made by the promoters. If in writing he is not bound to produce them, and if he is privileged from producing them, he cannot be interrogated as to their contents. Costs of appeal and below to be in the action. He referred to Bray on Discovery, p. 429, and *Davies v. Waters*, 9 M. & W. 608. Murphy, Sale, & O'Connor, Windsor, solicitors for plaintiff.

Ryckman, Kirkpatrick, & Kerr, solicitors for defendants Cox and Ryckman.

BRITTON, J.

JANUARY 9TH, 1902.

TRIAL.

BARR v. BIRD.

Fraud—Estoppel—Patent—Registration—Mortgage—Notice.

Action tried at Rat Portage, to compel the registration of a patent of mining location McA. 163, Rainy River, to establish a mortgage against it, and for damages for cutting and removing timber.

The plaintiff lent \$500 to defendant C. A. Spence, who represented that defendant R. S. Spence owned the location, and that the patent to him would soon issue. Subsequently C. A. Spence procured an assignment of the interest of R. S. Spence, and the patent issued to C. A. Spence for a half interest, the other half going to D. & E. Coxwill, not parties to the action. Plaintiff registered the mortgage and a caution in the local Land Titles office and commenced this action.

G. F. Shepley, K.C., and T. R. Ferguson, Rat Portage, for plaintiff.

C. A. Masten and W. B. Towers, Rat Portage, for defendant Bird.

BRITTON, J.—Held, upon the facts, that defendant C. A. Spence was estopped from setting up his ownership of the