# MARTIN'S MINING CASES.

PAULSON v. BEAMAN ET AL.

1902.
November 17.

(32 S. C. 655.)

SUPREME COURT OF CANADA.*

*Adverse Action—Map or Plan — Survey — Affidavit—Jurat—Condition Precedent to Right of Action—Provincial Land Surveyor—Oaths Act—Mineral Act, sec. 37 and Amendments.*

It is not a condition precedent to a right of adverse action that an affidavit and plan should be filed, as required by the Mineral Act, sec. 37 and Amendments.

Such plan if properly made and signed by a provincial land surveyor need not be based on a survey made by the same surveyor.

The provisions of the Oaths Act, sec. 16, apply to affidavits filed under said sec. 37, and the omission of the date in the jurat is not a fatal defect.

Judgment of the Full Court of British Columbia reversed, and that of MARTIN, J., restored; TASCHEREAU, J., dissenting.

Statement.

APPEAL from the judgment of the Full Court (1 M. M. C. 471; 9 B. C. 184) reversing the decision of the trial Judge, MARTIN, J., and dismissing the plaintiff's action with costs. The facts appear in the prior report and in the judgments which follow. The appeal was argued on October 28th and 29th, 1902.

Argument.

*S. S. Taylor*, K.C., for the appellant.

*Davis*, K.C., for the respondents.

Judgment. TASCHEREAU J., dissenting.

TASCHEREAU, J. (dissenting):—I am of opinion that the judgment of the Full Court of British Columbia should be affirmed. The appellant's action was rightly dismissed upon the ground that the map or plan required in an adverse action as a condition precedent by sec. 37 of the Mineral Act of British Columbia, as amended in 1898 and 1899, was not filed by the appellant.

The contention that any surveyor can, upon his oath of office, make a map to be used in a court of justice of any lot of land that he has never seen seems to me untenable. Why would he be required to make a plan at all, if, as Mr. Justice IRVING calls it, a picture by one of the parties would have been sufficient to all intents and purposes,

* *Present*—TASCHEREAU, SEDGEWICK, GIROUARD, DAVIES and MILLS, JJ.