

respondent, the Returning Officer sent another return to the Clerk of the Executive Council which he duly gazetted, but this was more than six weeks after the filing of the petition. It was contended on behalf of the respondent that the first return and gazetting of the election were void, and that the petition not having been filed after the second return must be dismissed.

Held, that the petitioner could not have done otherwise than file his petition at the time he did. The respondent was then relying on the return that had been made and on the certificate of the Clerk of the Council issued to him in pursuance of it as entitling him to his seat in the Legislative Assembly, and should be estopped from now claiming that the return and publication thereof were nullities and that the petitioner was not entitled to file his petition at the time he did. To hold otherwise might cause serious public inconvenience; and in this particular case the effect would be that by the neglect or default of the Returning Officer the petitioner would be deprived of his right to complain of the election. Preliminary objections overruled with costs.

Ewart, Q.C., and *Wilson*, for petitioner. *Aikins*, Q.C., and *Crawford*, Q.C., for respondent.

Province of British Columbia.

SUPREME COURT.

Martin, J.]

TATE v. HENNESSEY.

[March. 14.

Practice—Ex juris writ—Affidavit leading to order for—Jurisdiction of Local Judge—Order XI—Rule 1075.

Motion to set aside an order made by Spinks, Lo. J.S.C., allowing plaintiffs to issue a writ for service out of the jurisdiction. The action was for a declaration that defendants held certain interests in mineral claims in trust for plaintiffs. The cause of action was fraudulent misrepresentation.

Held, a Local Judge of the Supreme Court has jurisdiction to make an order for an ex juris writ.

The affidavit leading to the writ should be reasonably precise as to the essential facts alleged to constitute the cause of action, and if there are omissions of substance the order should not be made.

A Supreme Court Judge has power on motion to set aside an ultra vires order made by a Judge of limited jurisdiction.

Order set aside.

Duff, for the motion. *J. K. Macrae*, for plaintiffs.

Drake, J.]

CRANSTON v. ENGLISH CANADIAN CO.

[May 24.

Mining law—Unoccupied ground—Overlapping—Abandonment—Proof of.

Adverse claim tried before DRAKE, J., at Rossland, 23rd May, 1900.