STAR VS. WHITE APPEAL

EXAMINATION IN CHIEF OF EX-PERT ELMENDORF.

AND CROSS-EXAMINATION BY E. P. DAVIS

(Special Correspondence) Victoria, April 15.—It would seem as if the plaintims in the long fought out trial before the full court in Star vs. White, rather scored today (Monday), the sixth of the present hearing, when Davis, K.C., dragged some important admissions from expert W. J. Elmendorf upon cross-examination. pert invariably fell back upon the broa general statement that the result of the new work had in no way interfered with the contention of the defendants right along and did not assist the plaintiffs' view of the matter, but in det brought face to face with his testimony given on several occasions at Nelson during the progress of the trial there: first, when the trial started and then after an inspection and again later, when the question of more work was considered, when he had agreed that if the plaintiffs could prove the extension black fissure north and south, they would at least materially improv their position, he hesitated and, while speaking very guardedly and with countless reservations and restrictions he admitted, though not in the way Mr. Davis wanted, that the new work had disclosed the extention of "a" vein both northerly and southerly, but would not agree that this was the black fissure or that this admission upset his contention of a continuous vein for the Slocan Star right across from east to admitted that he did not west. ile admitted that he did not agree with expert Bochmer in all things but insisted that the two opinions were not inconsistent. To meet this last proposition Mr. Elmendorf admitted the xistence of the Slocan Star vein 200 feet wide at a given point and suggested the existence of a "horse" as an ex-

To an impartial observer who heard Mr. Elmendorf's story during the trial at Nelson, his evidence today gave the impression that the defendants' side had not been strengthened by its re-cital and there would seem to be at least a chance of the full court finding in favor of that "myth" judicially so leclared by the chief justice, the black fissure. It is, of course, quite impossible to say what the full effect is of the evidence given today, but some idea of it may be got when counsel sum up towards the end of the week. Faced by his former story and with the recently completed work to explain, Mr. Elmendorf had a difficult task dorf had a difficult task to perform which he accomplished far better than might have been expected.

Mr. Bodwell was absent from court all day on account of the death of hi prother which occurred at the hospital this morning. Mr. Lennie took case when court opened and the proceedings ran along without a hitch.
When the court opened this morning,
Mr. Lennie, in Mr. Bodwell's absence alled W. J. Elmendorf, of Spokane, the defendants' expert in chief, well known in Nelson as a consulting mining engineer and ae the defendants' star witness

at the first trial of this case before chief justice Hunter at Nelson. The witness estified that he had examined the property since the new work had been done. Commencing with the extension the south, he described the ore seam of vein quartz encountered at the outset and continuing till the breast of the drift is reached, where it still is to be seen. He exhibited a large photograph of the work taken by himself explaining the picture showed. The exac application of Mr. Elmendorf's testimony was not quite apparent until the cross-examination was well underway, when his difference of opinion with the plaintiffs' experts and with Mr. Bochmer on his own side, was brought ou strongly. At the other end of the south-ern drift the witness described a stringof ore found there. This stringer is from the main Slocan Star vein. his original evidence the witness said, e had been mistaken as to what would be shown if the crevice or crack now followed, should be mined. There were other instances along the No. 5 level where such stringers were thrown out from the main Star vein. The stringer is lying perfectly banded along the wall of the drift. Referring to the bending of the slates at the southern turn of the Star vein to the north as claimed by the defendants, the witness again de-clared, repeating his evidence at the original trial, that all the slates in the formation distinctly bent around the point where the vein turned and he exibited photographs to illustrate wha he meant. According to the plaintiffs' contention there should be no bend, the black fissure cutting sharply on to the south at the bending point. Turning to one of the plaintiffs' sketches of the

the work was further extended. Here Mr. Davis interrupted to say the old work, the plaintiffs would have to give evidence in rebuttal, as Mr. El-mendorf was not confining himself to

formation at the turning point in No.

level, the witness said that it had been demonstrated that what the plaintiffs

called the filling of the black fissure was

porphyry. Further the streak of ore in the "A" drift would be found right in

the black fissure, between its walls, i

the new work at all. Continuing, Mr. Elmendorf described the workings above the No. 5 level at the turning point to the north, claiming to further explain what he meant about the turn on the lower level. Going back east from the turning point on No. 5 level, the witness exhibited a characteristic material of the black fis photograph of a small cut in the admitedly Slocan Star vein, showing the for mation. Then he identified several samples of black slickersides said to be dominant characteristic of the black fissure, taken from the point shown in the photograph last mentionand declared that right along the whole length of what the plaintiffs term the course of the black fissure, he turn. The new work had shown up a that the barren section of the vein fissure extending south. This did not was accounted for by the presence of the black slickensides, as shown at the prevent the Star vein turning north as the superabundant mass of porphyry as pint in the Star vein indicated in the it did. He still maintained that it was shown on the model. There might and by the samples. Turning to possible to follow the wait of the vein other reasons for the barren stretch but the No. 2 vein he said it was the foot- around the bend.

wall streak of the main Slocan Star vein. The new work done there show-ed no new vein. A "horse" probably existed at this point. The point in cisted at this point. The point is nestion is along the line to the north from the turning point on No. 5 level, one of three places where new work was done, and which shows according to the plaintiffs a new vein christened by them vien No. 2, abruptly ended by the hlack fissure.

Coming to the northern extension No. 5 level the third piece of new work, the witness said it was one of many cracks striking off and was in no sense continuation to the north of the black ure so-called by the plaintiffs, or the Star vein as described by the de-fendants. The new work, said the wit-ness, had demonstrated nothing beyond the fact that a spur, or branch extended off north at the point in question.

Referring to the continuity of the veli around the bending point at the north and going on west the witness adhered the evidence given originally that the course of the vein was followed around the northern turning point as hown on the plan. Around the turning points the strongest seams were followed and the work was done on the vein

and shows its general course.

Describing "drag ore" the witness said the ore found along No. 5 level had none of the characteristics of drag ore.
All the indications in the explored porions of the mine in the upper above the long run to the north pointed to ore in place and not to drag ore at all. This statement point blank contradicts the plaintiffs' expert testi-

The Silversmith vein said Mr. Elmendorf, broke around the nose of the por-phyry intrusion and as it passed along kept away from and did not run along ide of the porphyry mass, he had never claimed any different course for this vein. Going over the western workings n the levels above No. 5 the witness claimed the turning of the vein and its general course was very apparent. He ccounted for the turns and twists and the irregular course followed generally by known geological reasons. The witness gave a list of assays taken from the new work showing varying values. Speaking generally as to the new work, Mr. Elmendorf said he was still

work, Mr. thoroughly satisfied that the Slocan Star vein extends along its course contin-nously as shown on the plan. The new work had strengthened several views held previously. The new work at the north and south ends had shown cracks continuing on but other cracks or crevices could be found branching off at different points and in no sense could that portion of the Star vein called by the plaintiffs the black fissure, be said to extend on north and south, the gen-eral course of the Star vein following the line developed, to the west, as shown on the plan and as previously sworn to.

Then Mr. Davis took the witness in hand. Commencing at the southern ex-tenion the witness admitted the extension of a fissure to the south with a wall, the hanging wall. The foot wall has been taken away, the work following along it. The new work exposes a fissure 28 feet broad extending south. That fissure would not be confined to any one level. It might or might no: extend to the surface. He would give no opinion on the subject, strongly pressed by counsel to do so. He had not seen any evidence of the fis-sure in the levels above or below No. 5 and could express no opinion as to the probable existence of the fissure on

The so called No. 2 vein was merely the main line of the vein running around a horse and joining the main body in the workings. If the No. 2 eastern extension did not join the main vein it would still be a branch of the main Star vein. If the vein was cut off by the black fissure it would be separate vein.

The witness at first differed from evidence on this No. 2 vein given by professor Parks in the same interest at the first trial but subsequently agreed.

Coming to the northern extension the witness said the fissure found there was a branch fissure such as could be found at many points. He could not say if it was a continuation of the black fissure. The real continuation was that followed by the Slocan Star vein as shown in

Mr. Elmendorf differed from Mi Bochmer as to the western extension of the Slocan Star vein where it turns almost at right angles. The vein, he said, was very wide at the front. the country was very broken, but he was of the opinion that the general course of the Star vein had been followed as shown on the plan by the actual work done. He did not think his version was at all inconistent with that offered by exper Bochmer. He did not agree with Mr Bochmer but if they were both correct the vein at this point would be 200 fee road. It might go around a horse bu the witness would not say positively, giving the suggestion only as a possipl explanation of his own theory squaring vith that of Bochmer's.

After the noon adjournment Mr. Day , continuing his cross examination Mr. Elmendorf, took up the question o some previous statements at the first trial by the witness concerning what is seen at the turn in the south at the levels above and below No. 5 and asked him if the new work did not show an extension of the black fissure on the No. 5 level but the witness repaied in the negative repeating that the ne work at the turn had in no way changed his originally expressed view. The wit-ness admitted the existence of "a fis-sure" 28 feet wide composed of soft black material such as is claimed by sure, in the new work to the south, but he insisted that this extension was identified several a mere branch fissure that might on might not extend any considerable distance. The witness again admitted that he was mistaken when he gave his testimony originally. He had then thought there was no appearance of any fissure running out to the south at the

Before the work was done the with ramined the first turn to the north and was clearly of the opinion that no fis-sure existed to the south. He had traced the wall of the vein turning a ound and had then stated that he was of the opinion that there was no fissure going on south. He admitted that the new work had shown up a fissure 28 feet in width, but again and again de lared width, but again and again de lared that the existence of this fissure in no way interfered with the defendants' theory of the continuance of the Star vein along its developed course. The witness had examined the workings at the first turn several times before the work ordered by the court was done. After each examination, until the present one, he always declared he could see no appearance of a fissure extendsee no appearance of a fissure extending south. At that time he did not believe there was a fissure there. He had been mistaken as the new work showed a fissure branched off there. In following the bend of the vein it

was possible to follow round on the ore or on the hanging walt. The witness had claimed to have followed the hang ing wall round at the levels above No. 5, this irrespective of ore. The 28 foot fissure shown in the new work was not apparent in the upper workings. There was nothing to show whether it existed there or not. It would be necessary to do more work at each level to prove the existence of the fissure. At the northern extension where the

new work was done, was another-branch of the Star vein running out. The new work showed this branch existing; it did not affect the course of the main Slocan Star vein which extended on to the west. The reasons for asserting that the Star vein to be one continuous vein were that the foot and hanging wall could be traced right along and so could the vein filling. If the fissure now known to exist at the 5th level extended up to the surface the walls could not be traced around the turn at the south. The result shown up by the new work had not, in the opinion of the witness, advanced the cut off theory of the plaintiffs or hurt the contention of the defendants' for a continuous of the defendants' for a continuou

course of the Slocan Star vein.

Mr. Davis read many extracts from the evidence formerly given by Mr. Elmendorf as to the effect of what might be shown up by proposed work and which, now that the work had been done, was actually shown to exist. The original evidence showed many admisoriginal evidence showed many admis-sions of what might be done with the hope of settling the matters involved, and counsel pressed the witness nari to show that the possible conclusions had been arrived at now the work was done. Mr. Elmendorf made some dis tinctions, rather fine ones it seemed, but maintained over and over again that the new work had not helped the plaintiffs or hurt the cause of the de-

endants. The court adjourned at 5 o'clock after counsel had stated that all the evidence would be in tomorrow. Mr. Davis added that his cross-examination of Mr. Elmendorf would be concluded by noon tomorrow.

Victoria, April 16.-When the Star vs. White litigation is finally ended it may be found that the law suit has meant to the mining experts what the war in South Africa proved to be for so many British generals—the grave of many re outations The evidence before the full court was

concluded during the afternoon session today and E. P. Davis, K.C., for the plaintiffs, the Star M. & M. Co., headed by John M. Harris, commenced his summing up of the case for the court. He announced that he would be com paratively brief leaving Mr. Taylor to deal with the evidence in detail and when the court adjourned at 5 o'clock this evening, the leading counsel for the plaintiffs had nearly completed his review. He will be followed by Mr. Taylor, and then Mr. Bodwell and Mr. Len-nie will be heard. The court sat longer today than usual and will continue to sit longer hours for the rest of the case so as to insure closing the hearing of the appeal by next Saturday evening. Mr. Bodwell was absent again today from the court room on account of his brother's death. Te expects to rejoin

Very unexpectedly Davis dropped the morning after half an hour's work, de-claring that further questioning had been rendered unnecessary, as also had the calling of further witnesses by the Mr. Lennie cross-examined laintiffs. S. Fowler at some length as to the finding in an adjoining mine; Oscar White was in the box for a short time as was also W. S. Drewry, but none of the actual evidence produced today was

of a new or startling character. Shortly after the court met this afernoon Mr. Davis commenced his sumning up of the whole case for the plaintiffs, and a very forceful and vigorou address was continued for nearly thre hours, the chief characteristic of which was a strong frontal attack on the deendants' experts and their testimony viewed in the light of the results of the new work, the defendants' experts said ater that Mr. Davis was very "abusive" but that is hardly a fair term since the counsel, while attacking the estimony fiercely at times, always fe' back on the alternative suggestion that the denfendants' witness had been carrie away with their desire to support the contention of their side of the case; that their judgment, knowledge, idea of fair play and presentation of the dis closed facts of the case had gone all to pieces. But with limitation such as nentioned. Davis tore to pieces the or ginal testimony and that given to the full court by Mr. Elmendorf and Mr. Bochmer declaring that the indepenent evidence of Zwicky and Clark practically proved the plaintiffs' chief co

ention When the court opened this morning Mr. Davis continued his cross-examina-tion of expert W. J. Elmendorf. Mr. Elmendorf said that the spur veins the north and south as shown in the new work were mineralized at the same time the main Slocan Star vein was and

many extracts from the evidence taken at the trials at Nelson of Mr. Elmen-dorf himself and of several of the defendants' witnesses and Mr. Elmendorf was asked to explain the references and square them with conditions as show: by the new work. Counsel apparently oy the new work. Counsel apparently made but, little progress with the expert as compared with what took place yesterday. Many of the questions asked were plainly put on the court notes for recerence on the argument of the whole case, and as a matter of fact no new matter was adduced than that already given in this correspondence. After half an hour of wordy warfare with the expert, Mr. Davis dropped the witness rather unexpectely and after some brief explanations to Mr. Lennie, Mr. Elmendorf resumed his seat. In his answers to some of Mr. Lennie's questions Mr. Elmendorf incidentally explained how experts differ. The chief justice, Mr. Sizer and the witness visited and examined all the mine workings in company, during the progress of the first trial and before judgement was given, at the point in the turn to the north of the Star vein on No. 5 level as the defendants' say and where the plaintiffs say the black fissure cuts off the vein, a very close inspection was made by his lordship, said the witness. "I saw what Mr. Sizer saw and he saw exactly what I did, we differed as to description and as to what we saw meant geologically. As a matter of fact the new work has disclosed a fissure to the south and at the time of the joint and the same of the south and at the time of the joint of the south and at the time of the joint of the south and at the time of the joint of the south and at the time of the joint examination Mr. Sizer pointed out a crack at this point and declared a prob-able fissure to the south. I then thought no fissure would be found to the south. The work has proved that Mr. Sizer was right and I was wrong-but the continu-

Oscar White was recalled on a point overlooked in his former examination touching the fault formation of an adjoining mine to the properties under review. The fault, as shown in this mine, lies nearly at a right angle direction to the fault direction as claimed for the

ation of the fissure does not affect our

black fissure in this mine.

To Mr. Davis Mr. White stated that he did not agree at all with Mr. Fowler's description of the fault fissure in the adjoining mine. He knew ar. Fowler was the mining engineer in charge of the adjoining mine in question and should know all about the mine formaticn - direction of faults and other points. He contradicted Mr. Fowler's statement as to direction of fault, point blank, and added that no such fault as Mr. Fowler contended for, in line with the black fissure extended, existed. On Mr. Fowler's map of this mine being produced the witness denied the real existence of the faults as shown on the map. There might be a "slip" at ...e points referred to but no fault. There was a distinct difference between a slip and a fault. He, the witness, was look ing for an extension of the black fis-sure from the Slocan Star mine as claimed by Fowler, when he examined the adjoining mine. He did not find it as Mr. Fowler had sworn he had, and declared positively several times that it could not be found.

W. S. Drewry, provincial land sur-

veyor, ealled by Mr. Lennie, said he had surveyed the new work recently done at three points in the new workings and had reproduced the work on the court

would dispute re the correctness of Mr Drewry's work was the reproduction of brewry's work was the reproduction of the new work at the so called No. 2 vein on No. 5 level. This work was not correctly shown on the map. To. Mr. Taylor the witness, described his notes of the No. 2 vein plan. He declined to admit the correctness of a plan of the working made by Mr. Fowler on a scale

half an inch to a foot.

A turn in the fact of the vein was the point asputed. It was this matter that caused much controversy at the tial one morning last week, when Mr. Bod-well declared that Mr. Fowler's pencil-ed sketch on the map showing this new work at this point, was incorrect and he, Bodwell, had had a correct drawing put on by Drewry during recess, calling from the bench an expression of opinion that the map should not be "tampered" with by any one without the permission of the court Mr. Bodwell had exclain ed to Mr. Taylor at the time "your nose has disappeared," meaning that the turn or nose of the vein as claime! ould be seen by Mr. Fowler, was gone. Mr. Drewry swore positively that his plan was correct and Mr. Fowler's was

wrong, so far as the point involved. Mr. Fowler was then called and he swore to the correctness of his sketch of the turn in the vein, not shown on Mr. Drewry's plan. His plan or sketch was on a scale of half an inch to a foot. He gave his measurements in detail describing minutely how he found the "nose" or the turn in the ore. His sketch was an exact representation of what was seen in this new working. The witness' note book with rough plan and notes made at the time was put in evidence. Then Mr. Fowler's attention was directed by Mr. Davis to Mr. Oscar White's contradition as to the dirction of the fault fissure in an adjoining mine, from what he, Mr. Fowler, had claimed. In addition to reiterating his former statement that the direction of the main fault fissure in this adjoining mine was identical with that of the rection of the black fissure as claimed by the plaintiffs, the witness said the filling of the fault fissure in the adjoining mine was also identical with the filling of the black fissure. Miners used the terms "slip" and "fault" in-

erchangeably. To Mr. Lennie, Mr. Fowler, after the Monday adjournment, explained how he made the survey of the disputed plan. He had used a Bounton compass in determining the bearings, a transit, as used by Mr. Drewry would be more cor-rect, but his compass would determine accurately the "nose" of ore which Mr. Drewry's plan did not show up. 1ms curve or "nose" was the only difference between his and Mr. Drewry's plan. The witness then went again over the fault found in the adjoining mine, without altering his former testimony. He adaltering his former testimony. He admitted faults in the mine where Oscar mitted faults in the mine where Oscar White located them, and in addition practically agrees with Zwicky and Clark. There is no getting away from his admissions. He puts it differently himself as the mine's main fault

the ore and it was found again about 200 feet to the south. The main fault did not cut off the ore at the points shown on the plan but the ore was shown cut off by the fissure at other points in the workings. The main fault fissure alluded to was the same as the black fissure, identical in make up gen-

Mr. Fowler's cross-examination closed all the evidence in the case. Mr. Davis announced that although he had intended offering further testimony for the plaintiffs, he had concluded this was not necessary and he commenced his summing up of the case as to why, in view of new evidence and of the evi-dence at the first trial, the judgment of the learned chief justice, dismissing the action with costs, should be reversed and a judgment given by full court finding in favor of the plain-tiffs, the Star Mining & Milling com-

pany.

Mr. Davis said he would be comparatively brief in his argument, leaving to Mr. Taylor to go into the evidence more fully. He alluded to the many contradictions in the expert evidence and said only a view by the court would assist in clearing up the matter. He would in clearing up the matter. He would lay great stress on the new work last done in view of what was said at the first trial would be found if the work were done, and what has actually been found to exist. In this latter case hy would argue in favor of what e was, not necessarily the most trutaful, but the most reliable for the court to relie upon. If experts took at one stage of the suit and afterwards abandoned .. or changed it materially it was a strong point upon the questio of unreliability. Mr. Harris had first thought the Slocan Star vein had extend ed on to the south, where it bends to ed on to the south, where it beams the porphyry. When Mr. Harris' engineers examined the ground before the trial they said Mr. Harris was mistaken and they explained what, from their standpoint, had taken place geologically at the point in question. The theory advanc-ed at the trial by the plaintiffs had been maintained right along and was maintained today. Their contention, quoting from his own opening at the first trial, rom als own opening at the first trial, counsel said that they denied the extention of the Slocan Star vein as claimed by the defendants. There was a fault fissure, called the black fissure for the purpose of identification, cutting off and abruptly terminating the Slocan Star vein at its western and ting off and abruptly terminating the Slocan Star vein at its western end. This black fissure was a separate and non-ore bearing fissure, running at reading and some star vein. If the contention was right the black fissure would be found to extend on its course north and sfouth past where the present decelorment shows it. The fissure was development shows it. The fissure was older than the vein and cuts off the lat ter plainly, the wall of the fissure clearly seen extending on at what the defendants call the bend of the Star

vein.
Continuing Mr. Davis said that original position had never been changed by the plaintiffs and the new work done had proved that their original conten-tion had been proved. Then counsel turned to the contradictions amongst the defendants' own experts and to the changes of front which he said they had clearly been forced to take when confronted by what was shown by the new work. It was originally agreed among the experts and with the approval of the court that the new work asked for would decide the moot questions one way or the other, although the defendants had at every point again and again resisted the many applications made to have this new work done.

"I have a very grave suspicion that."
Mr. Elmendorf always thought that the doing of the new work would settle the case; that he thought so before it was done and thinks so today, now that it is

Turning to Mr. Sizer's original testimony counsel showed what that expert said would be demonstrated by the new work. First in the south where an ex tension south would show the black fissure extending in that direction and of course, doing away with the theory that the Star vein turned north at this point. Then at the north end at the point "B", an extension north would show the black fissure extending in that direction cutting off the Slocan Star vein at this point,

The new work at these two points, together with the other observed facts would determine whether the black fissure cut off the Star vein and would show that the Star vein did not make the two bends as claimed by the de-fendants and as shown on the plan in court. This was the position, counse said, taken by expert Sizer at the first trial before the work was done. He Sizer, was then willing to take his stand on what the new work would prove. Mr. Sizer had been ridiculed by Mr. Bodwell and had been held up as an expert who would square his evidence with whatever theory suited him and he was held up to the court as abclutely unreliable and all sorts of rather plainly 1 at suggestions Continuing counsel read man made. extracts from Mr. Sizer's original testinony as given under cross examination by Mr. Bodwell to show that his position aken at tuis time was clear and definite; that the fissure extended north and south cutting off the Star vein, and south cutting on the Star vein, had no turn. Further, as to the characteristic fining of the black fissure, that it would be found extendine north and south with walls or bounding planes.

There was nothing "quibbling" about Mr. Sizer's statement then, such as Mr. Elmendorf exhibited when pressed in like manner at that time. The plain-tiffs agreed that if the work asked for did not prove what they, the plaintiffs said it would, they, the laintiffs, would be out of court for good. As to what the work did show the evidence of Mr. Zwicky and Mr. Clark should settle. They were independent parties entirely and they agreed the other day, that the black fissure, they said "a" fissure, ex-tended north and south as shown up in the work done under their direction, with well defined walls and vein filling. Such evidence must carry great weight Bochmer, the defendants' new expert,

of course, he was bound to do that. He ures, one within the other, with "spurs" or "branches" extending off. This "spur" to the south and the ore to the north are readily the black fissure extended. Bochmer and even Elmendorf admit that a vein goes off at the points in question, they saying that they are branch veins or spurs of the Slocan Star vein. The defendants always claimed that the walls of the Star vein clearly turned at the two points, that these walls could be traced by the eye; that these walls could be seen to-day or any day. That not merely the day or any day. That not merely the ore turned but the walls did. Now the new work shows a fissure extending to the south 28 feet wide, with ore in it, and "I am not going to insult the intelligence of this court by suggesting that this fissure does not extend up to the surface and go down to the lower levels as Mr. Elmendorf had the hardihood to advance the other day when he got be-hind the most extraordinary shield that an expert ever run up to keep the rain off him, viz., that he could form no op-inion from all he knew and saw whether he would expect this fissure to go down and to extend to the surface. His statement stamps him as a witness who should not be believed. I do not charge him with wilful perjury, but he has been so carried away in maintaining his side of the case that his evidence cannot be believed or taken seriously. If he spoke truthfully then he does not know his business or he was hanging back and

trying to mislead the court. Turning to Oscar White and Cavanaugh's contradiction of Mr. Fowler, counsel said that the surrounding circumstances showed both White and Cavanaugh either as utterly reckless wit nesses or as men who did not know their business. They either intended to mislead the court deliberately or they were so dense that they did not under stand really what they saw in the mine workings.

Referring to the evidence given on the turning point to the south counsel read extracts from the original testimony given by Mr. Elmendorf that he could form no opinion if a vein branched off to the south, as afterwards ascertained by the new work. "I think," said Mr. Davis, "that if Mr. Elmendorf had turned his colossal mind wanter ' e court, he could have said, as Mr. Sizer said, that a fissure might be found extending on to the south. Was his testimony given to

inform or misinform the court at this and at other points in the workings?" The defendants have to connect the Slocan Star vein in the east with the Silversmith vein in the west and to do this they use 1200 feet of the black fissure to do it. There was Bochmer's version, that the plaintiffs could take, that at the north end of the black fissure where the defendants say their vein turns to the west and the Silver-smith vein is found, there is no vein, no sign of one to be found, while Bochmer goes on to admit the undoubted existence of a fissure, a spur, or a branch vein along to the south which the plaintiffs say is the black fissure.

Then Mr. Davis recalled the story told by professor Parks at the first trial

told by professor Parks at the first trial in Nelson, Parks being an expert for the defendants. Parks swore that no other vein existed at the turning points that he, the witness, saw with his own eyes, the wall turning, the foot and nanging; at some places the walls were not visible, but he marked on the plans where the turning could be seen at all the different levels, some 11 different points. Now since the new work had been done Mr. Parks was shown to he hanging: at some places the walls were een done, Mr. Parks was shown to be clearly wrong, and he could not have seen what he thought he saw, for it is now known that the walls are not there as Parks thought he saw them. Parks also swore there was no evidence of a crack or fissure to the south, but the new work has proved a fissure 28 feet wide and it is impossible to have the walls turning and all 28 feet too, and the fissure is now admitted. Thus all the defendants' expert witnesses are found to have sworn positively to certain conditions new shown to be absolutely untrue. That being the case the court can place no confidence whatever in all else these experts testify to. On the contrary all that Fowler, Sizer and Atwater swore to and swore would be found if the work were done, had been passed to be the ease by what is found red to be the case by what is found in the new work, hense the stress laid on

The evidence given by N. J. Cavanaugh at the first trial was touched on, Mr. Davis saying that Mr. Cavanaugh posed as an expert and contradicted S. S. Fowler promptly. Mr. Cavanaugh followed the work at the turns when the drift was being driven. He saw the walls at the turn, there was no break in them, no sign of a fissure. That was Mr. Cavanaugh's testimony, but the 28 foot fissure has since been found and the walls Mr. Cavanaugh traced around never could have existed, although Mr. Cavanaugh said: "You can pass your hand right around the sides of the wall

at the turn."
Alexander Sharpe's story at the first trial showing where that well known mine manager had been clear that there were well defined walls at the turns and no evidence of a fissure extending north and south as shown to exist by the new work was dwelt on in detail as show-ing the unreliability of "sure" expert testimony. Sharpe was unusually posi-tive that the defendants' were right and the plaintiffs altogether wrong in their

respective theories.

At this stage the court adjourned for the day, Mr. Davis to continue his address tomorrow morning.

Victoria, April 19.-Would chief jusice Hunter have decided the Star vs. White case as he did at the trial, dis-missing Mr. Harris' company's action with costs, if his lordship had known what the new work done since the judgment would show up? One would not think so after listening for a day and a half to counsel's argument on behalf of the plaintiffs before the full

Mr. Davis closed his argument this morning after speaking for a little more than an hour and S. S. Taylor followed in the same interest, occupying the attention of the court until 5 p.m.

Today Mr. Davis contented himself with an analysis of Bochmer's evidence samples. I mean't drag ore in the mine.

chiefly, and did not continue his pointed attack on Mr. Elmendorf's testin made so pronouncedly all yesterday Davis seized on points where he claim ed Bochmer differed from all the other experts produced by the defendants notably Elmendorf and professor Parks and taking up the Bochmer theory he contrasted it with that advanced by the other experts in the same interest and claiming that the only conclusion that could be reached upon perusal of all the defendants' testimony was that Bochmer's view was the correct one then all the defendants' other witnesses were mistaken upon vitally important were mistance upon vicinity important points. In concluding his address Mr. Davis laid great stress upon the fact that the plaintiffs' three expert witnesses Fowler, Sizer and Atwater had staked their reputations at the first trial by stating emphatically what would be found if the new work then asked fo was done, had maintained one attitude throughout all the long litigation, and were now found to have been consister ly correct while the reverse must truthfully be said of the defendants' experts and their testimony, leaving an irrist-able conclusion to be drawn by the cour on the question of reliability of the dif-

ferent sets of witnesses. Mr Taylor followed for the rest o the day and had not concluded when the court rose this evening. He follow ed upon the broad lines laid out by Mr.
Davis but going into the conflict of evidence, and the analysis of the whole case most minutely, giving chapter and verse for all his statements and incidentally showing that his careful and able preparation and presentment of the plaintiffs' case must have entailed an normous amount of hard steady work His address was mainly a collect from the hundreds of pages of matte and connected up with brief argument illustrating the points upon which he aid special stress, as he went along. Mr. Bodwell was in court today for the first time since last Friday. He will

commence a lengthy summing up of the defendants' case when Mr. Taylor concludes tomorrow forenoon.

Beyond a slight protest from Mr. jusfice Morrison against the reading long extracts from the evidence proceedings today were without any marked incident.

Continuing from yesterday Mr. Day s commenced his part of the argument today by referring to Isaacson's evidence at the trial, Isaacson being a shift boss in the employ of defendants when No. 5 level was run. He swore that the Star vein between well defined slate walls turned around to the north at the first turn shown in the Isaacson was given as a practical min-er's view, it agreeing with the experts as to the turn of the vein as against its being cut off. The evidence of Fox and Davis, two working miners, to the same effect as Isaacson, was also read by counsel with some caustic comment as to the sworn-to existence of walls around the turn to the south walls which the new work has proved did not and could not exist as there was a 28 foot fissure there.

Mr. Bochmer's evidence given last week was then taken up. Mr. Bochmer, said Mr. Davis, clearly differed from Elmendorf and Parks on many material points as to the course of the Sta vein, and as to the course of the black fissure at the northern extension of the black fissure, Bochmer agreed that the fissure continued on north, as proved by the new work there, and that the "main vein" turns to the west, no where Elmendorf and all the defend ants' experts say it does, but at a point in the black fissure over 120 feet further south. He said the ground had not been opened up to show the course west of the main vein, where as all the defendants' witnesses declared that the vein turned west at point B. and along the workings as shown in the plan. Mr. Bochmer's view supports the plaintiffs' contention in a double way. He agrees as to the continuation to the north of the black fissure and that there is no evidence of the alleged Star vein turning west into Silversmith ground at the point where the other experts of the defendants say it does.

Taking Mr. Bochmer's statement as correct that there is a turning to the vest of the Star vein when he says the

west of the Star vein where he says, the west, the witness and Elmendorf admitted this without dispute. It was impossible that Mr. Boohmer's "main vein" extending to the west through unexplored country, could by any conceivable means be identified with Elmendorf's course of the Star vein to the west turning at rolling B. If Boohmer is west turning at point B. If Bochmer is right, Elmendorf is wrong, and when Elmendorf says the two views are re-concilable he shatters his own reputation as a reliable witness. Mr. Bochmer said something entirely new when he found another turning point to the west the Star vein then the one sworn to to date by all the other defendants' wit-neses. The chief result is that the court must find there is no reliable evidence. of the continuation west of the Star vein at the point B, the northern turn-

ing point.

Bochmer declared frequently that the geological conditions found in the ed for in several possible ways and he merely favors or prefers one way above another. "Now." continued "the burden of proof here lies on the defendants, but as a matter of fact, while the defendants' witnesses differ the only sure evidence that has been offered to the court, evidence that has been proved to be correct by the new work done, has been th evidence Fowler, of Sizer and of Atwater 1 the plaintiffs." The general eviden of possible geological conditions in past ages, as offered by the defendants was of too dim and misty a character upon which to settle an important case like

the present.

The plaintiffs offered the court some thing stronger than "pure conjecture" of the Bochmer type.

The plaintiffs always contended for

the existence of drag ore along part the black fissure. Mr. Bodwell to d

Mr. Davis continuing said t tiffs had been ridiculed time for not producing samples of in court at the first trial. dozen or more samples are not ed Bochmer declined to swear or not the samples were dra not. If the plaintiffs prove dr the black fissure it is unque evidence of a fault, that is black fissure, is a fault fissure plaintiffs' cut off theory is conf the one hand and the continuit Star vein is disproved on the hence the importance of dr Counsel took up Mr. Bochmer reasons for his explanations of logical conditions found to exist mine workings and in them four sound evidence in plaintiffs' Running through this summ Bochmer's, counsel referred to diction by other expert evidence points as no signs being fo striation in the workings, the theoretical suggestions offered up others, and the want of any support the rest.

As to the black fissure being

fissure Mr. Davis referred to mendorf's photographs of t work in the southern extensio pared with Mr. Elmendorf's wel skill," and declared that Clor dence disproved all that Mr. lorf sought to prove. Mr. Clar independent witness. He swore piece of smooth faced rock with tached to it produced to the or week was a part of the footw smooth surface showing movem Elmendorf admits he made a

about the extension of a fissur south. Fowler, Sizer and Atw not make a mistake. That is t of the new work. Mr. Bochmer taken to further discredit Eli His. Bochmer's evidence can b no other way. As to the cont through the Silversmith of the S to the west the defendants were court on their own evidence.

As to drag ore in the black where it cuts off the Star vein a

the latter is thrown away to the Fowler, Sizer and Atwater swithe ore found along the direction throw, in the flussre, is drawn and the flussre, is drawn and the flussre, is drawn in the flussre, in the flussre, in the flussre, is drawn in the flussre, in the flussre ore in place. One set of experi the other. On an equally in point, the extension or non-et of the south of the black fiss opinion of the first set of expleen found correct by the ne and the second set of experts little been found to have been been found to have been found mittedly been found to have been As to drag ore then, the I should have the benefit of the under these circumstances, reing that the onus of satisfying to on the points under consid upon the defendants.

In concluding his address M pressed upon the court the care sideration of the effect of the ne Mr. justice Morrison—"Of w have heard so little, now

Mr. Davis continuing, said 1 much of his argument upon we shown by the new work tracing feet of it back through the evidence. en at the original trial. The r showed exactly what the plain the court would be found if t were done. The court fully un what it was hoped would be p disproved by the new work. I the work was done and the recontention fully demonstrated contention fully demonstrated tan end of the defendants' contention urged along many lines possible. urged along many lines, possib the new work was done, but

longer argueable. S. S. Taylor, K.C., followed for the plaintiffs' going minusall the evidence touched generally Mr. Davis. He urged that ent hearing was an appeal on case and must be so consider stated the two contentions plaintiffs' on the one hand a fendants on the other and ceeded to take up the section evidence supporting the plai variable contention from the f

the present time.

Referring to one of the drift turn, counsel said that accord pert testimony crosscuts in ings were invariably marks, being run out to asce make up of the surrounding Practical miners, when in douthe course of the vein, run o cuts to test where they we Where they knew well what t following they did not run cro the point first indicated, the the point first indicated, the showed that the miners did I the course of the vein, althoug fendants' now claim the cours vein was perfectly clear. Tu Mr. Sizer's original evidence read extracts touching on w shown in the workings at thurn in the Star vein and where ness declared the vein was en minated, cutoff by the black fiertience showing the black fi evidence showing the black f tending to the south. The cort to the north, not being the Sta a bent-around course, but the sure only. At the first bend b during the first trial, only a r the workings could be seen owi lagging being in place there. then explained what would be the south if further work we Counsel followed the original given by the plaintiffs' witness first trial showing where the at the different levels came t angles to the black fissure, v ated by a fault fissure, that black fissure so designated—a throw of several hundred fe north occurred, along the line drag ore was found in the v of the black fissure.

sel deliberately and coolly researches from the evidence.
heard it once, will have to again. Reading it now was Mr. Taylor replied that cour ed to connect up sections of dence with the theory support proceeded with his analysis.

ing the make up of the vein the black fissure what the pla ways contended for was that

slickensided material was th

Mr. justice Morrison objecte