

\$40 and some provisions, in consequence of Brown informing him that he knew of some claims not taken up and would locate them in their joint interest. Brown located and staked out two claims, the Sunday Sun and Pittsburg, and recorded them on August 13th and 16th, 1894, in plaintiff's name, plaintiff finding fees therefor. As to these claims there is no dispute, except as to a counter-claim for damages put in by Brown, on which no evidence was offered. On August 13th, 1894, the St. Louis was recorded by defendant Brown in his own name, the plaintiff as before paying recording fee. The plaintiff claims an undivided half interest in the claim. The first dispute commenced here; Henry Allis claims that he was the discoverer of the claim and had staked it out, and was on the ground when Brown arrived, but Allis being uncertain whether his miner's license had been issued, because he had not received any reply to his application for the granting of a license, agreed that Brown should stake the claim in his own name and give him a deed of the undivided half. As a matter of fact a license was in existence at the date of staking. Brown in his pleading admits this allegation of Allis. Brown sold to McConnel an undivided half of the St. Louis claim for \$1,200 and gave him an option on the other undivided half which never was exercised. This sale and transfer is not questioned. On October 5th, 1895, a bill of sale of one-quarter of the claim was made by Brown to McLeod. On McLeod taking his claim to be recorded he discovered that J. A. Stussi, the plaintiff, claimed an undivided interest in the claim.

On October 23rd, 1895, the plaintiff commenced an action in the County Court of Kootenay to have it declared that Brown and McLeod were trustees for him of an undivided one-half interest in the St. Louis mineral claim. On this action coming on for trial the judge ordered that the defendant, Mr. Allis, who had also commenced an action against Brown for an undivided one-half interest in the same claim, should be added as a defendant to the plaintiff's action, and his own action struck out, which was accordingly done.

Before judgment was given by the County Court Judge in the action of *Stussi v. Brown, et al.*, namely, on the 7th of March, 1896, an order was made by Mr. Justice Walkem, prohibiting all further proceedings in the action.

On May 22nd, 1896, Mr. Spinks, the County Court Judge of Kootenay, gave judgment in the action of *Allis v. Brown*, in favor of the plaintiff. This was the action which had been struck out of the docket.

Held, 1. That this judgment was void, as it was given without jurisdiction and without trial.

Held, 2. That the plaintiff was entitled to an account from Brown of the proceeds of the sale of such portion of the St. Louis claim Brown had sold and converted into money, and a judgment for one-half of such proceeds when ascertained, and that the plaintiff was entitled to a declaration that the remaining quarter of the first claim was partnership property, the same to be sold for the benefit of the partnership.

Wilson, Q.C., for plaintiff.

Davis, Q.C., for defendant.