

note, the defendant should not further set up the loss of the note, and that the costs of the plea of loss and incident thereto, and of so much of the application as related to barring defendant from setting up such loss, and of settling and obtaining such indemnity, should be costs in the cause to defendant in any event.

*Held*, also, that under s. 69 of the Bills of Exchange Act, 1890, it was proper to refer to the Master the matter of the indemnity bond, although the words of the statute are that an indemnity "To the satisfaction of the court or a judge" is to be given. *Schoolbred v. Clarke*, 17 S.C.R. 265 followed.

*McMeans* for plaintiff. *Hough*, Q.C., for defendant.

## Province of British Columbia.

### SUPREME COURT.

Martin, J.]

SCHOMBERG v. HOLDEN.

[Feb. 11.

*Mineral Acts—Adverse claim—Affirmative evidence—B.C. Stat. 1898, c. 33, s. 11—Practice.*

Adverse action under the Mineral Act and Amending Acts to establish plaintiff's title to the Black Prince mineral claim, the defendants having restaked the claim under the name of the Catardin, and applied for a certificate of improvements. The action was tried at Nelson before MARTIN, J. It was admitted that the plaintiff was a free miner, and that the Catardin claim which the plaintiff was attacking by these adverse proceedings occupied practically the same ground as the plaintiff's claim, the Black Prince. Counsel for the plaintiff put in a certified copy of the record showing priority of location and due record of the plaintiff's claim, and stated that, it being admitted by the defendant that the defendant's claim occupied the same ground as the plaintiff's, and that the plaintiff was a free miner, this would be the case.

*W. A. Macdonald* moved to dismiss the plaintiff's action on the ground that affirmative evidence of his title had not been established as required by s. 11 of the Mineral Act Amendment Act, 1898.

*Bowes*, in reply: The section relied upon does not apply in this case because the action was commenced prior to the passing of the statute. The plaintiff has made out such a case that if no evidence is offered on the part of the defendants the plaintiff would be entitled to judgment.

*Held*, that s. 11 of the Mineral Act Amendment Act, 1898, applies to all adverse proceedings including those commenced before the Act. By proving (1) his free miner's certificate, (2) prior location and due record, and (3) the overlapping of the claims in dispute, a prior locatee who is plaintiff in adverse proceedings makes out a prima facie case. Motion overruled.