

## Province of British Columbia.

## SUPREME COURT.

Full Court.] NOBLE FIVE MINING CO. v. LAST CHANCE MINING CO. [Feb. 6  
*Mining Law—Extralateral rights—Trial—Adjournment of—Appeal  
 Extension of time—Jurisdiction.*

Appeal from an order of Drake, J. (on application to postpone trial) fixing a date (peremptory) for trial. This was an action by the owners of a mineral claim for an injunction restraining defendants who were the owners of adjoining mineral claims from running a tunnel from their claims on to the plaintiff's ground. The defendants claimed under Mineral Act of 1891, s. 31, the right to follow onto plaintiff's ground the vein of ore in question because the apex of the said vein was on the surface of their claim. Before going to trial the defendants wished to do development work in order that they might determine definitely the continuity of the vein in question, and they showed that it was impossible for them to do the work needed by the date fixed for the trial.

*Held*, allowing the appeal, that the defendants should not be forced on to trial without being given a fair opportunity of doing such development work as might be necessary to determine the position of the apex of the vein in question.

On this appeal the question of the Court's jurisdiction to extend the time limited for appeal after the time limited had once expired came up, and counsel for appellant wished to argue that the Court had such jurisdiction and that the decision in *Sung v. Lung* (1901) 8 B.C. 423 was wrong. The Court announced that if it became necessary to decide the point all the Judges would be summoned to hear argument.

(A decision on the point was not necessary so it was not argued.)

*Bodwell*, K.C. for appellant. *Luxton* for defendant.

Full Court.]

Gold v. Ross.

[April 27.

*Landlord and tenant—Eviction—Surrender of term by operation of law.*

Appeal from the judgment of Henderson Co., J. This was an action against an assignee for the benefit of creditors for a declaration that plaintiff was entitled to a privileged claim for rent against the assignor's estate under the Creditors' Trust Deeds Act, 1901, s. 54.

Plaintiff let a store to H. A. & Co. who afterwards executed an assignment for the benefit of creditors to defendant who did not take possession of the premises. Plaintiff on the third day after the assign-