

Held, that where one trustee is resident out of the jurisdiction the Court will not vest the estate in the trustees within the jurisdiction on the ground that it will not reduce their number. A petition to vest the trust estate in certain trustees within the jurisdiction ought to be served on the absent trustee.

Wilson, Q.C., for petitioner.

Full Court.] PENDER v. WAR EAGLE: EX PARTE JONES. [March 11.

Court stenographer—Person undertaking to act as such—Estoppel—Whether bound to furnish copy of notes—Fees payable to.

Appeal from an order of DRAKE, J., refusing to compel one C. F. Jones to deliver a transcript of his notes, taken at the trial of the action. The action, which was one for damages against the War Eagle Consolidated Mining and Development Company, Limited, was tried at Rossland in October, 1898, and judgment was entered against the plaintiff, who desired to appeal, but was unable to obtain the extension of the shorthand notes of the evidences taken at the trial by C. F. Jones, who acted as Court stenographer. On 13th September, 1898, Jones by letter from the Attorney-General's Department was instructed to go from Victoria to Nelson, and act as Court stenographer at the Assizes; and in the letter it was provided, "and your remuneration will be fixed after your return." He was never appointed as provided by sections 63-71 of the Supreme Court Act, R.S.B.C., 1897, c. 56. Jones proceeded to Nelson, and thence to Rossland, and acted as Court stenographer during the Assizes at both places, *Pender v. War Eagle* being one of the cases reported by him at the latter place. On his return to Victoria he presented to the Attorney-General's Department an account for his services as stenographer at \$8.00 per day for the time he was absent from Victoria, and \$10.00 for the first day, claiming that under an Order-in-Council of 13th May, 1891, those were the fees he was entitled to. The Attorney-General refused to vouch the account, and claimed that by his letter of 13th September he was to fix the fees. Jones thereupon refused to deliver up his notes of evidence, claiming a lien on them. The plaintiff was willing to pay the transcript fees for a copy of the evidence; and on being refused a copy applied to DRAKE, J., on 22nd February, for an order compelling Jones to deliver a transcript of his notes. The application was refused, and he then appealed to the Full Court before WALKER, IRVING and MARTIN, JJ.

The Court allowed the appeal, holding that a person who undertakes to act as Court stenographer cannot refuse to furnish parties to a suit with a transcript of his notes merely because his fees have not been paid by the Crown.

Martin, Attorney-General, for appellant. *G. A. S. Potts*, for Jones.