

asked that the appeal be struck out of the list as security had not been furnished. The court stated that an order for security for costs of an appeal to the Full Court should provide for a stay of proceedings until security is given. In the result the appeal was stayed until security was furnished and unless furnished one week before the first day of the next regular sittings of the Full Court the appeal should stand dismissed.

Duff, K.C., for appellant. *Galt*, for respondent.

Full Court.] MURPHY v. STAR MINING CO. [March 23, 1901.
Mining law—Adverse claim—Affidavit and plan—Extension of time for filing—Practice—Mineral Act, s. 37.

Adverse action under the Mineral Act commenced in December, 1899. No affidavit or plan as required by the Act having been filed within the required time, the plaintiff on an application to IRVING, J., got an order dated 21st February, 1900, extending the time until 15th May, 1900. This order not having been complied with, nor any statement of claim having been delivered, the defendants took out a summons to dismiss for want of prosecution, and on the return on 14th November, 1900, DRAKE, J., refused the summons and without any motion being made for that purpose extended the time for filing the affidavit and plan until 14th May, 1901.

The defendants appealed and the appeal was allowed, McCOLL, C.J., dissenting.

Per curiam: *Noble v. Blanchard* (1899), 7 B.C. 62, must not be taken as deciding that an order to extend the time for filing the affidavit and plan required by s. 37 of the Mineral Act may be made by a Judge in Chambers. Such an order can be made only by the court. The appeal is allowed, but without costs, as counsel for the respondent may have been misled by the report of *Noble v. Blanchard*.

Hunter, Q.C., for the appeal. *Alexis Martin*, contra.

Full Court.] [Jan. 10.
STAR MINING AND MILLING CO. v. BYRON N. WHITE COMPANY.

Inspection—Underground workings—Extralateral rights—Form of order—Copies of plans—Undertaking as to damages—Costs.

This was an action of trespass to extralateral rights appurtenant to a mineral claim located and recorded in 1891, and the point in dispute was as to the terms of an inspection order enabling plaintiffs to inspect defendant's workings.

Held, affirming McCOLL, C.J., 1. The order may allow the inspecting party to make copies of plans, charts, etc., of the other party's workings.

2. The inspection order should contain an undertaking for damages and the practice does not require security to be given.

3. In interlocutory appeals when a party is allowed costs of the appeal, the costs are payable forthwith. Appeal dismissed with costs.

Bodwell, K.C., for appellants. *Davis*, K.C. (*S. S. Taylor*, K.C., with him), for respondents.