

work which we ask to do we should be tracing something which has been placed there by the hand of God. The one is artificial and the other is natural, and that is the only difference that can be found between Lumb vs. Beaumont case and ours. They did not know in the drain case where the end of the drain was, they did not know that the other end of the drain was in the plaintiff's house and that the drain which they knew about ran over to the other drain. They surmised that the same as we surmise that their vein runs down to the other point, but they did not know it any more than we can know, until that soil is dug up, that the vein above is the vein below. There is really no distinction between the cases, only the one follows the artificial and the other the natural.

Mr. Bodwell—Your Lordship will remember that I was stopped. I did not address any argument to your Lordship on that point.

Mr. Davis—I should like to be heard.

The Court—Yes, if Mr. Davis wants to make any reply, I shall be very glad to hear it.

Mr. Bodwell—I am not going to wear your Lordship's patience out.

The Court—No, indeed.

Mr. Bodwell—Your Lordship said you wanted me to discuss the question whether the judgment of the Full Court decided the point, and I did confine my argument to that, but my friend in his opening and closing has travelled from that subject continually, and has appealed to your Lordship's discretion as if it were open to you. There is one of two courses to be adopted with reference to that part of the argument. Either that part of the argument can be adjourned until after your Lordship has decided whether it is open to you or not, but there is one thing I want to say anyway, that it is very possible, if your Lordship should find that you have the power to exercise the discretion now that all the work we have been put to in getting ready for the trial would be thrown away, and we would have had an indefinite postponement of this trial.

Mr. Davis—No; or course, not from your point of view.

Mr. Bodwell—Unless we are to sit down and invite these gentlemen to come in and take ore-bodies, it would be a different proposition altogether. Of course, there are two theories about what may happen if that winze were sunk. One is, no ore will be found there. Either one of the propositions we have our theories upon. We are prepared upon this case as it stands now to go to trial. If further work is going to be done, we may or may not be prepared to go to trial now, because there may necessarily be a very large amount of development work done; then there is that which we have done in order to make the future proof which may be set up. It may be a very nice thing to let our friend be allowed to shove his winze through and then go to trial when we are not ready. But that is not the point which is, whether the question has been settled up to date and the point on that was, where the judgment of the Full Court shows on this, continuity, exactly like there are many other issues upon which this case can go outside of that point altogether, and that it was thought that the Court might never reach it—might never reach that point—and it may be never necessary to consider this boggy man which my friend has hung up—that your Lordship will not be able to understand the evidence that will be before you.

Mr. Davis—My friend stated that the doing of this work might cause an adjournment of the trial. He suggests nothing in support of this, except a vague statement that if that work was done—

Mr. Bodwell—Well—

Mr. Davis—If my friend has anything more to say I shall be glad to sit down and hear him say it.

The Court—Pass this Boggy vs. Boggy.

Mr. Bodwell—No; I am serious in that statement. If my friend quotes my language, I object to his quoting it, because he never can quote it correctly. That is the only reason I interrupted.

Mr. Davis—I have the reply in this case, and I suppose we want to get through some time. If my learned friend has anything more to say I wish he would say it now, and then I will reply, because I have a reply, and I intend to exercise it, as I have a right to do. My learned friend says, doing this development work might mean an adjournment of the trial, and I say it again, that if he disputed it we will have the reporters read the notes. The only reason that he suggested as supporting that statement was a vague idea of his, that if that work were done it might become necessary for the Iron Mask people to do a lot of other development work. That is the only reason he gave.

The Court—Just now.

Mr. Davis—Yes, sir; that is the only reason he gave. If my learned friend says I am wrong, we might still resort to the note to settle it.

The Court—That is right. Let us go along.

Mr. Davis—When my learned friend makes a statement of this kind he should give his reasons. We are not asking for work to be done all over the place, so far as this application is concerned. We are asking for fifteen feet to be run through from the foot of the winze to the top of the drift. Now my learned friend, if he had any foundation for the statement which he made, why didn't he give your Lordship the reasons? As he says, when that fifteen feet are run through they are liable to find ore there or they will not. Whatever way it is, unless he shows your Lordship something to the contrary he is just as ready for trial then as he ever could be, except that it might turn out that he might have something that he could not get over as easily, but he has the same thing, and he has taken the same position as to the Centre Star No. 3 shaft, that is, that there is ore all down there, or practically all down; it is not a vein at all, and I presume that is the same position he would take if the ore was found in the Centre Star winze between the present bottom and the bottom of the drift. But, however, that may be, that has nothing to do with the application here. My learned friend could have done development work that he wished, because all of the development work is in his own ground. They could have done any work which they chose to. We are the only people who are being prevented from doing work. We have been prevented by them; they have opposed every application we have ever made to the Court, in the most strenuous way, and with the Full Court having decided the jurisdiction, as the Full Court has decided it, that is, referred the question to the discretion of the trial Judge, and the trial Judge came to the conclusion, that some work ought to be done, it is for them to make an application for that purpose, and your Lordship can deal with them just the same as you are dealing with us.

The Court—I think I would like these two affidavits. I would like that Barringer and Adams au-