

could prevail. I therefore think the defendants are entitled to rectification.

If I am wrong in holding that the defendants are entitled to rectification, I should have thought, although the question was not raised upon the argument, that in any event the plaintiffs would not be entitled to an injunction restraining the defendants from using the tunnel or passageway through the strip in question for the purpose of ingress and egress and for conveying the ore out of the mine to the defendants' shaft, on the ground that such passageway is an easement of necessity. . . . See *Gale on Easements*, 2nd ed., p. 871 et seq.

Any portion of the road allowance embraced in the piece of land in dispute which has been acquired since the action must be regarded as covered by the lease as rectified, for, while when the agreement was made the plaintiffs had only the right to acquire the road allowance, the fact that they have obtained a patent since, merely "feeds the estoppel" created by the lease.

It was conceded on the argument that the plaintiffs are entitled to an account of all ore mined on their property and of the royalties payable thereunder.

The plaintiffs also contended that the lease was forfeited for non-performance of the conditions therein contained; but I am unable to find any evidence warranting a forfeiture. The operations were carried on under the supervision of officers employed by both corporations, and, while there may have been a failure, in some particulars, literally to comply with the terms of the lease, I think any such failure was acquiesced in by representatives of the plaintiffs.

Judgment dissolving the injunction, directing rectification of the lease, and directing a reference to the Master in Ordinary to take the above accounts. Further directions and the question of the costs of the action and of the reference reserved until after the Master's report.

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SILL V. ALEXANDER—MASTER IN CHAMBERS—APRIL 4.

*Security for Costs—Sufficiency of Surety—Value of Shares in Company—Cross-examination of Surety—Information as to Affairs of Company.*]—Motion by the defendant to disallow a bond filed by the plaintiff for security for costs, or to require the surety to attend for further examination at his own expense and answer certain questions he refused to answer when cross-examined upon his affidavit of justification. The surety stated that he had no property except 47 shares in a company of which he was managing director. He said he had sold 20 shares of his own at par. The