Province of British Columbia.

SUPREME COURT.

Full Court.] [Nov. 8, 1905.

GINACA *v.* MCKEE CONSOLIDATED HYDRAULIC.

Lease holders and placer miners—Respective rights of, to water —Lease and placer claim—Difference between.

It was the intention of the Legislature by s. 29 of the Water Clauses Consolidation Act, as enacted by s. 2 of c. 56, 1903-4, to secure to free miners, occupants of placer ground, whether they hold as original locators or as lease holders, that continuous flow of water which the section specifies.

A free miner having obtained certain rights on one creek under s. 29, does not forfeit them because he obtained additional rights on another creek under another section.

The enactment contained in c. 56 of 1903-4, shews a clear intention to cut down the rights of holders of water records, and to increase the benefits accruing to the individual free miner under the Placer Mining Act.

Per IRVING, J. (dissentiente) :—A leasehold, being held under a lease granted pursuant to the recommendation of the Gold Commissioner, on the representation by the applicant that the ground is abandoned as placer ground, the term "location" would not be properly applied to it.

Decision of HENDERSON Co. J. (Mining Jurisdiction), affirmed.

A. D. Taylor, for appellants. *Kappele,* for respondents.

Full Court.] MCADAM *v.* KICKBUSH. [Nov. 22, 1905.

Nonsuit—Evidence in rebuttal, rejection of—Burden of proof —Damages.

In an action of replevin, plaintiff proved ownership and rested his case. Defendant then moved for a nonsuit, the decision on which was reserved until he had presented his case. Plaintiff offered evidence in rebuttal to meet the case made by defendant, which was rejected on the ground that evidence to prove the non-existence of the tenancy alleged would be merely