

Bourgeois and Morris, being joint owners, as aforesaid, located not only the Centre Star, but the Idaho mineral claims, and that the Idaho and Centre Star were on the same vein, and therefore the location of the Centre Star was bad, and never became a good location; but whatever rights the Centre Star people have in that vein or in that mineral claim dates, not from the record, and is based, not upon the location, but upon the arrangement, whatever it was, that was made with the Government, by which they obtained a patent in 1893. The Centre Star mineral claim was patented in the year 1893, and that in the year 1893 there was no provision in the law for granting extralateral rights, and therefore the claim of the Centre Star people to extra-lateral rights is not founded upon the statute; that is to say, if their title began in 1893, they could acquire no extra-lateral rights with respect to the Centre Star mineral claim; if their title began in 1890, then they would acquire a certain class of mineral rights. If their title began in 1891, they acquired no extra-lateral rights of any kind or description. Now, then, the amendment which we seek to make—the point which we wish to bring to Your Lordship's attention is this: That the title of the Centre Star people being based upon a patent, that the patent relates back to the first valid act which the Centre Star people or their predecessors in title took in order to found the claim which afterwards resulted in a patent; that their original location, being bad, under the Mineral Act, could not be a valid location, but if they have any right at all it is based, not upon location, but upon an agreement between the locators and the Government, under the terms of which it was arranged that notwithstanding the invalidity of their original location, they should still have a patent, but that patent would relate back, then, not to the location, but to the agreement, implied agreement—for it must be so taken—with the Government, by reason of which they got a title (Preliminary Motion 14), which would be in the year 1893. But at that time the Government had no power; no officer of the Land Department had any authority to issue a patent for a mineral claim which would contain the incident of extra-lateral rights.

The Court—This is your case: You say Bourgeois and Morris entered into a partnership prior to 1890?

Mr. Bodwell—Yes.

The Court—That the ground was taken up in Bourgeois' name only; is that correct?

Mr. Bodwell—The Centre Star was taken up in the name of Bourgeois; the Idaho was taken up in the name of Morris.

The Court—Whatever it was, it would not matter. The battle is with the Centre Star just now.

Mr. Bodwell—Yes.

The Court—Bourgeois took up the Centre Star?

Mr. Bodwell—Yes.

The Court—The claim was recorded in Bourgeois' name?

Mr. Bodwell—Yes.

The Court—At least, it was recorded in his name there; he took it up, although they were partners, as you allege.

Mr. Bodwell—Yes.

The Court—Do you allege that that record here over-rides the partnership or the partnership over-rides the record—because that is what it comes to?

Mr. Bodwell—The two would stand together in this way: The arrangement between the two was that the Centre Star should be owned by them jointly,

and that the Idaho should be owned by them jointly. Whether the Centre Star was recorded in the name of Bourgeois or Morris would make no difference; it was the joint property of both. (Preliminary Motion 15.) If it was recorded in the name of Bourgeois, then Bourgeois would be holding an undivided half interest in that mineral claim for Morris.

The Court—In trust; that is your point?

Mr. Bodwell—Yes. The Idaho being recorded in the name of Morris, Morris held an undivided interest to the Idaho for Bourgeois, therefore they were both the joint owners of the Centre Star and of the Idaho, and the Statute, section 80, is quite familiar to Your Lordship. I think it is section 80, of the Act of 1888, says—the same language has been continued down through all of the Mineral Acts to the present day: "No free miner or incorporated company shall be entitled to hold, directly or in the name of another person, more than one mineral claim on the same lode or vein, except by purchase." Now, there was no purchase. The only title which either Bourgeois or Morris had was the title by location.

The Court—In other words, you say they had two mineral claims?

Mr. Bodwell—They had two mineral claims on the same lode, in direct contravention of the Acts. Therefore, their locations both of the Centre Star and of the Idaho were unlawful locations.

The Court—Mr. Bourgeois was the locator of the Centre Star and Morris the locator of the Idaho, each owning a half interest in the other?

Mr. Bodwell—Yes.

The Court—Contrary, as you say, to section 80.

Mr. Bodwell—Yes. Therefore, it was an unlawful location, and no title can be founded on that location.

The Court—An unlawful location in each of them? (Preliminary Motion 16.)

Mr. Bodwell—In each of them, and as to both claims.

The Court—Therefore, no lawful title to either. Don't these sections come into operation after the certificate of improvement—those sections that refer to getting a certificate of improvement—come into operation then?

Mr. Bodwell—That will be a matter of defence, of course, to which proper weight will have to be given. My friend, Mr. Davis, will rejoin, as he has already rejoined that we did not add that, and that question will have to be considered and decided. But just for the moment the point I want to make is, that there can be no lawful location under the Act in this way, therefore, no title can be founded on that location. If the patent subsequently issued to the Centre Star, that patent must either be considered to be invalid altogether, or if valid, to be founded upon an arrangement implied by which the Government agreed to raise its contravention of that Statute and, notwithstanding the defect in the location, to give a patent for the mineral claim, but the patents would then depend not upon location—for that was altogether bad, and always bad.

The Court—I suppose Mr. Davis is going to answer you by quoting *Farmer vs. Livingston*.

Mr. Bodwell—*Farmer vs. Livingston* does not apply to this case. In that case *Farmer*, whoever was the party applying, I think it was *Farmer*, had not acquired any right in the land at all, because his application for a homestead entry had never been ac-