

Province of British Columbia.

SUPREME COURT.

Full Court.] CENTRE STAR v. IRON MASK. [Dec. 24, 1898.

Mineral Act, C.S.B.C., 1888, c. 82, ss. 77 and 82—Right to follow vein—Practice—Injunction—Order for inspection—Rule 514.

Appeals argued together from orders continuing injunctions until trial, and from orders refusing inspection of property in dispute. The Centre Star Company, under C.S.B.C. 1888, c. 82, s. 77, which gives the owner of a vein or lode, whose apex lies upon the surface of his location, the right to follow it within the lands of others, was mining in adjoining lands owned by the Iron Mask Company, which Company obtained two injunctions restraining the Centre Star Company from proceeding with its workings at two different points, pending the trial of the action. Subsequent to the injunction orders the Centre Star Company applied for inspection, and for leave to do experimental work, which was refused. On appeal the Centre Star Company asked that the injunction orders be modified so as to allow experimental, or development work to be done, in order to obtain a knowledge of the character and identity of the veins for use at the trial.

Held, MARTIN, J., dissenting, dismissing the appeal, that it should be left to the Judge at the trial to say whether or not actual work should be done for the purpose of elucidating any particular point with regard to the issues raised.

Davis, Q.C., and Galt, for appellant. *Bodwell and A. H. MacNeill*, for respondent.

Irving, J.] IN RE SPINKS TRUSTS. [Jan. 31

Trustees and Executors Act, R.S.B.C., 1897, c. 187, s. 59—One of trustees outside jurisdiction—Vesting order—Service of petition for.

Petition under s. 39 of the Trustees and Executors Act for a vesting order. The petition showed that the testatrix, who died in September, 1892, had by her will appointed her brother, resident in England, and the petitioner (her brother-in-law) her executors, and after bequeathing certain specific and pecuniary legacies, had devised and bequeathed the residue of her real and personal estate to her executors upon trust, to sell and convert the same as therein mentioned. The will was duly proved in 1892, by the petitioner, power to prove being reserved for the other executor who has never proved, renounced probate, disclaimed, nor acted in any way in the execution of the trusts.