THE PARIS BELLE MINE

Text of Chief Justice Davie's Judgment in This Important Mining Case.

His Reasons for Declaring the Location of the Claim Illegal and Void.

The Chief Justice has given his written judgment in Nelson and Fort Sheppard Railway Co., v. Jerry et al. This decision is of great importance to mining men especially, dealing as it does with the question of locating mineral lands in the province and what it is that constitutes a mineral claim. The judgment is as follows:

NELSON & FORT SHEPPARD RAILWAY CO. vs. JERRY ET AL.—The plaintiff company, incorporated by special provincial act (1891, cap. 58), to construct, and which has constructed, a railway from a point near the town of Nelson to a point near Fort Sheppard, British Columbia, which work was declared by competent authority to be a railway for the general benefit of Canada, received a grant of public land in aid of its railway, and in this action sues for possession of certain lands comprised within its grant to which the defendants claim title under locations as mineral claims alleged to have been made on the 17th June, 1892, by E. J. Noel, and on the 3rd January, 1895, by the defendant Jerry, the benefit of both of which locations has passed to the defendants, the Paris Belle Mining Company.

The plaintiff's title proceeded upon chap. 38, 55 Vic. (1892), which authorized the government to grant lands in the Electoral district of West Kootenay, not exceeding 10,240 acres for each mile of railway constructed, and that upon the filing and giving by the company of certain plans and securities there should be reserved from pre-emption and sale a tract of land on each side of the line of the proposed railway. Accordingly, on the 12th August, 1892, a reservation was made of a tract sixteen (16) miles in width on each side of a line running from the northeast corner of lot 97, group 1, to the international boundary line. It is not disputed that the conditions as to plans and security were complied with. The subsidy act provided for the selection and projection upon a plan to be filed by the company of alternate blocks of an area of six miles, and that as the work of construction proceeded the government might issue grants of lands within the alternate blocks. On the 23rd March, 1893, the plaintiffs filed a plan showing the projection of alternate blocks, among which was exhibited block 12, containing a tract of land commencing at the boundary line of the province, and extending northwards and including the lands in question in this action.

The evidence shews that the actual survey on the ground was begun on the 24th September, 1894, and finished on 29th November, 1894, and field notes were deposited in the land department on the 10th January, 1895. In pursuance of such selection the Crown, on the 8th March, 1895, granted to the company what is now known and described as section 35, township 9a, comprising the former block 12 as defined on the plan filed on the 23rd March, 1893. Such grant excepts all mineral claims held prior to the said 23rd March, 1893. The Subsidy act declares that the company shall be entitled only to unoccupied Crown land, and that to make up for any area within any of the blocks of land to be selected by the company which shall, before their selection, have been alienated by the Crown or held by pre-emption or lease, or as mineral claims, the company shall receive similar areas, of not less than one mile square, in other parts of the district. The question in this action is, whether the defendants have a title paramount to that of the defendants over the lands covered by the alleged mineral locations or either of them; whether, in fact, they are to be deemed excepted from the plaintiffs' grant. The claims were located and recorded, the one as the "Zenith" and the other as the "Paris Belle." The location of the "Zenith," which, according to the evidence, was made on the 15th June, 1892, occupied most of the land which was afterwards staked as the "Paris Belle." The place where the present shaft of the "Paris Belle" is sunk is at the point where Noel did part of his assessment work on the "Zenith." Section 10 of the Mineral Act provides that in the event of a free miner entering upon lands already occupied, for other than mining purposes, he shall, previous to entry, give adequate security to the satisfaction of the Gold Commissioner, and after entry shall make compensation for any loss or damage which may be caused by reason of such entry. It is admitted that in this case no security was given, or compensation paid or tendered.

The plaintiffs contend that at the time of the "Paris Belle" location the land was already occupied by them for other than mining purposes, and was therefore not subject to location as a mineral claim, except under conditions which it was admitted were not complied with; in support of which contention the uncontradicted evidence of Edward J. Roberts proved the situation of the claim in Block 12, adjoining the town of Rossland on the northeast; that the railway company had upon Block 12 a line of road and the station of Wanita: that the road was located in 1892 and was finished in 1893, and that the station of Wanita was built in May or June, 1893. It was burned down or destroyed, and a new station, in the same place, constructed in the fall of 1893, and the railway company has occupied these stations from the time of their building until now, and has operated the railway since it was constructed. The records, both of the "Zenith" and the "Paris Belle," were further impeached, on the ground that no vein or lode of mineral had been discovered, that no mineral in place had been discovered, and that, therefore, the land was incapable of being located as a mineral claim.

To the defendants' contention that the "Zenith" location existed at and prior to the 23d of March, 1893, the plaintiffs replied that the "Zenith" was never properly located, or staked, represented or worked, but was abandoned by Noel in 1892, and had consequently lapsed and become again waste lands of the crown. Upon the evidence the plea of abandonment by Noel of the Zenith seems clearly established. He located the land in partnership with Joseph Villendre, although he recorded in his own name only. He tells us that three or four months after the location he did some work starting a shaft. The work was of about the value of $50. His partner was supposed to do his share of the assessment work but did not do so, and consequently he, Noel himself, did no more. Noel says, "I remonstrated with him for not doing his part of the assessment work, and he said he did not think he would do his portion; and when he said he was not going to do his work I quit. I never did any more assessment work on the Zenith. There is nothing in the evidence at variance with the testimony of Noel, nor anything to show that any further work was done upon that location.

The Zenith claim, therefore, having been abandoned, I am of opinion, that immediately upon abandonment it reverted to and became the property of the crown (Regina v. Demers, 22 S. C. R. 482), and as such came within the plan filed by the plaintiffs on the 23rd of March, 1893, as part of block 12, which block was afterwards adopted as a division of the land by the government, and conveyed to the plaintiffs in one lot by one conveyance by the government.

It is established upon the evidence that before any other attempt at location of a mineral claim within block 12, the plaintiff's railway was constructed and the station of Wanita built and rebuilt thereon. The block therefore became lawfully occupied, as to portion of it at least, for other than mining purposes, the evidence showing that the line was located in 1892 and finished in 1893. The plaintiff company being then in actual visible, occupation of the block was in point of law, and, following well recognized legal authorities, to be deemed in constructive occupation of all of it. In Davis vs. C. P. R., 12 Ont. Rep. 724, it was held that "occupied lands" under the Railway Act, 46 Vic., Ch. 24 (D), denote lands adjoining a railway and actually or constructively occupied up to the line of the railway by reason of actual occupation of some part of the section or lot by the person who owns it or is entitled to the possession of the whole. In other words, actual occupation of a part is deemed to be actual occupation of the whole. In Little vs. McGinnes, 7 Maine, 176, cited with approval in Harris vs. Mudic, 7 Ont., App. Rep. 429, the court remarks: "The deed may not convey the legal estate. Still the possession of a part of "the land described in it . . . may "be considered as a possession of the "whole, and as a disseisin of the true "owner, and equivalent to an actual "and exclusive possession of the whole "tract, unless controlled by other pos- "session." In Robertson vs. Daley, 11 Ont. Rep. 352, P., the owner of certain land in 1811, sold it to D., who went into possession and occupied until 1827 or 1828, when he was turned out by the sheriff under legal proceedings taken by Dufait, who was put in possession and so remained until 1854, when he conveyed to O., through whom the plaintiff claimed. D's actual possession had been only of about 10 acres. Held that D's possession was of the whole land, and that he could not be treated as a squatter so as to enable him to acquire a title to the 10 acres actually occupied. In Hereron vs. Christian, 4 B. C. Rep. 246, I upheld the same principle.

It follows, therefore, that the plaintiffs on and after the construction of their railway and station, lawfully occupied block 12 for other than mining purposes, and, such being the case, a mineral claim could be acquired thereon only under Section 10 of the Act which provides that whilst the miner may enter upon all lands, the right whereon to so enter, prospect and mine shall have been reserved to the Crown and its licensees, (and such right is reserved in respect of the Nelson and Fort Sheppard grant by section 8 of 55 Vict., chap. 38), yet in making entry upon lands already lawfully occupied for other than mining purposes, the free miner, previous to entry, shall give adequate security to the satisfaction of the Gold Commissioner for loss or damage, and after entry shall make compensation to the owner or occupant. Compliance with these conditions is, I think, imperative upon the miner seeking to locate a mineral claim upon land occupied for other than mining purposes, as I have held Block 12 to have been and that failure to observe them vitiates the location.

By section 34 of the act the interest of a free miner in his claim is to be deemed a chattel interest, equivalent to a lease for a year, and so on, "subject to the performance and observance of all the terms and conditions of this act." In Maxwell on Statutes, 3rd edition, page 521, the distinction is drawn, as demonstrated by numerous authorities, between cases where the prescriptions of an act affect the performance of a duty and where they relate to a privilege or power: "Where powers or rights are granted with a direction that certain regulartions or formalities shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred." I think there can be no question that the rights and privileges conferred upon free miners in this province come under this head, and that, as remarked in Maxwell, at page 521, "the regulations, forms and conditions prescribed"—for the acquisition of the miners' rights and privileges—"are imperative in the sense that the non-observance of any of them is fatal." See also Corporation of Parkdale vs. West, L. R. 12 App. Cas., 613. In Belk vs. Meagher, 104 U. S., 284, Chief Justice Waite remarks: "The right of location upon the mineral lands of the United States is a privilege granted by congress, but it can only be exercised within the limits prescribed by the grant." Upon the ground, therefore, of failure to observe the conditions of section 10, I am of opinion that the defendant's title fails.

I am also of opinion that the plaintiff's title must prevail upon the further ground that no vein or lode of mineral had been discovered, and that no mineral in place had been discovered to justify the location.

The act defines the word "mine" to mean any land in which any vein or lode or rock in place shall be mined for gold or other minerals, precious or base, except coal, and "mineral" to mean all valuable deposits of gold, silver, etc. "Rock in place" is defined to be all rock in place bearing valuable deposits of gold, cinnabar, lead, copper, iron, or other minerals usually mined, except coal; or, in other words, that "rock in place" is practically synonymous with a "vein" or "lode," and, as stated by the witness Kelly, means, I think, a substance confined between some definite walls or boundaries. Where, then, you have this substance so located, and bearing valuable deposits of gold or mineral, you have "rock in place," or a "vein" or "lode" within the meaning of the act. It does not, I think, mean mere mineralized rock wherever you may find it, as suggested by some of the witnesses. Mr. Cronan, for instance, says: "I call it mineral in place if it is in rock. If I was to find it in earth or soil where apparently it had been moved, it would not be "mineral in place." He seems to think that wherever you find mineral in the country rock you have "rock in place." I do not think he is right. Taking the statutory definition of a "mine," "mineral," "rock in place," reading them together they are, I think, intended to refer to a vein or lode (found in rock) carrying valuable deposits of mineral. The object of this act was, I think, to give the miner the right to acquire a vein or lode so found, and sufficient adjoining land to work it. If he has discovered no such vein or lode he acquires no right to anything. All the sections of the act must be read in the light of the interpretation clauses, and, so read, seem to point to the right to locate a vein and use the land for the purpose of mining it, and for no other purpose. Read particularly sections 10, 14, 20, and especially section 26, "No free miner shall be entitled to hold more than one mineral claim on the same vein or lode except by purchase," but may hold by location upon any separate vein or lode. Section 30: "Should any free miner locate more than one mineral claim on the same vein or lode all locations, excepting the location and record of his first claim on such vein or lode shall be void." Then section 36 provides that before he can obtain a crown grant the miner has to show that he has found a vein or lode within the limits of his claim, all implying the same thing, viz: that to have a location there must be a vein or lode—or rock in place—and under the act of 1895, the spirit of the law, conspicuous throughout all the legislation is further demonstrated by requiring that before the miner can locate at all he must file a declaration showing his discovery of a vein or lode. In other words, he can have nothing under the act except a vein or lode and the prescribed area of land to work it.

The meaning of our act in this respect seems much the same as the law of the United States. Section 2,320 of the revised statutes of the United States enacts: "Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, etc., may be located, and the definition there of a vein or lode as interpreted by the courts is the same as I have expressed it here. In Eureka Mining Co. vs. Richmond, Morrison's Mining Reports, Vol. 9, page 582, argued in the Supreme court of the United States, Mr. Justice Field, after elaborate argument, and with the advantage of the best of expert and scientific skill, defines the distinguishing characteristics of a vein or lode, as the location of a vein between well defined boundaries, containing a combination of mineral matter which has been thrown up or generally precipitated in solution against the walls of the cavity by the action of water circulating in the original fissure of the earth's surface.

In Wheeler vs. Smith, 32 Pacific Rep., 785, it is laid down: "The mineral land laws of the United States were enacted for the purposes of securing the miners upon the public lands the title to mineral discovered by them, and a sufficient quantity of the land in which mineral is discovered as will enable them to prosecute the work of development and production successfully. Mines, as known to those laws embrace nothing but deposits of valuable mineral ores, and do not include mere masses of non-mineralized rock whether rock in place or scattered about through the soil." See also Consolidated Gold Mining Co. vs. Champion, 63 Fed. Rep. 544; Harrington vs. Chambers 1 Pac. Rep., 375; Erhart vs. Boaro, 113 U.S. Sup. Ct. Rep. 527. In Davis v. Webbold, 139 U. S., it was held that the exemptions of mineral lands from pre-emption and settlement and for public purposes do not exclude all lands in which mineral may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify expenditure for its extraction, and known to be so at the date of the grant; and Field, J., remarks: "There are vast tracts of country in the mining states which contain precious metals in small quantities, but not to a sufficient extent to justify the expense of their exploitation. It is not to such lands that the term 'mineral' applies—citing Alford v. Barnum, 45 Cal. 482; and Merrill v. Dixon, 15 Nev. 401; Cowell v. Lammers, 10 Saw. 246, 257; U. S. v. Reed, 12 Saw. 99, 104—and many other cases, showing that the expression 'mineral lands,' means only lands which are valuable for mineral purposes, that is, which will pay to work, and not lands in which you may find 'a trace' of mineral (as described by some of the witnesses in this case) and sometimes more, but which do not demonstrate themselves to be worth working." As remarked in Alford v. Barnham, 10 Morrison's mining reports, 422: "The mere fact that portions of the land contained particles of gold and veins of gold bearing quartz rock, would not necessarily impress it with the character of mineral bearing land. It must, at least, be shown that the land contains metals in quantities sufficient to render it available and valuable for mining purposes."

The authorities above quoted, and many others which could be cited to similar purport, seem precisely to fit the evidence in this case, of which there is but little conflict. Mr. Kelly, one of the plaintiffs' witnesses, tells us that the mineral veins in the vicinity of the Paris Belle appear to be divided into a belt; a belt of barren rock, and another belt of veins; that these veins follow a general trend in one direction. For instance, the most valuable mines so far discovered and worked, the "War Eagle," "Josie," "Le Roi," and "Centre Star" appear to have a general direction to a certain point indicated by the "Nickel Plate" where they stop, and to the south of which you find no mineral vein until you get across the country, and start on the rise on the other side of the stream, when you again find what appears to be another belt of veins running in the same direction, and having all the characteristics of the belt of veins traced on the other side. That between those two belts we have a large section of diorite or country rock, which is similar in character to the material which forms the walls of the veins where discovered. The country rock carries a certain amount of iron, but not in quantities which would make it valuable for mining purposes, but the particles of iron do not of themselves indicate the proximity of a vein.

Speaking of the "Paris Belle," with which he is quite familiar, Mr. Kelly says that the rock in that shaft is the same ordinary diorite or country rock which composes this intermediate belt; that in the little seams or counter-cheeks in the rock, white iron is to be found, and sometimes there may be gold in some of them; but not as indicating a vein but being merely the ordinary mineralization which covers the entire country. To the same effect is the evidence of Mr. Funiell. Mr. Noel originally located the property on the theory that wherever you found a contact between two classes of rock you would find a vein, but finding no vein in this case he abandoned the claim as valueless. The defendants' witness, Cronan, admits that there is no wall, he says that the rock bearing mineral of the "Paris Belle" is country rock, but he says also that diorite, or country rock, is the mineralized rock of the "Paris Belle." He says he found mineral in place on the "Paris Belle"; but when asked what is "mineral in place" he defines it merely as "mineral in rock" as distinguished from "mineral in clay" or any other formation. What he means, then, when he tells us that he found "rock in place" in the "Paris Belle" is merely this, that he found rock with mineral or a trace of mineral in it, which nobody doubts that he did, or that, in fact, anyone could find the same thing to a greater or less extent in the country rock. But that is very far from saying that he found "rock in place" according to its accurate definition, which means a vein, something between walls.

Mr. Cronan further tells us that he took samples of this "rock in place" as he calls it—"mineralized rock" as it at most was—and found it to contain all the way "from a trace up to $2 a ton in value." No one doubts this; the same thing might be said of any of the country rock in the vicinity, and in some cases it would not be surprising to find it going as high as $9.50, as another of the witnesses said; or as high as $12 which was Mr. Burke's assay. But to discover such mineralized rock is very far from saying that you have found a lode or vein; something upon which you could with advantage spend money in development.

Mr. Burke is asked, in reference to the "Paris Belle," "Is there a vein on it?—mineral in place?" To which he answers "I think so"; and there his examanant in chief leaves him. But upon cross-examination he says he found neither foot wall nor hanging wall; he found what he calls a vein, sunk evidently between two walls, but could not find either of the walls, because the vein is larger than the shaft and sunk in vein. Asked whether, by sinking further, he thinks a vein between walls could be found, he says: "That I am not prepared to say; that is drawing a conclusion that might be borne out in work and might not"; and he says that he has no means of saying whether the so-called "vein" is valuable or not, not having examined it. Mr. Thompson says this is a prospect, not a mine, and that there are about two thousand prospects located in the district. He does not undertake to say there is a vein, and can say nothing about the appearance of the surface when the location was made; and Mr. Hansy's evidence throws no further light on the case, so far as indicating the discovery of a vein.

Upon this evidence I can come to but the one conclusion, that there was no discovery of anything beyond the country rock—seamed and mineralized, although that doubtless here and there is—with a trace to $9 or so in various places. All that the defendants have shown me to have been discovered on the "Paris Belle" is a similar formation to that described and condemned in the following extract from Morrison's Mining Rights, page 106: "Where the opinions say that it may be rich or poor, they refer to the well known fact that true veins for long distances are often quite barren. But it does not follow that every seam of rock which will assay is necessarily any vein at all; for there do exist seams which carry a little mineral and yet are not veins within the geological or legal definition. The mineralization in such cases, in some of them at least, is caused by infiltration of ore from a true vein, or deposit along some plane of cleavage, or along the plane between two formations, or through mere mechanical cracks in the rock; and all their mineral is only precipitated or crystalized seepage from the lode or deposit above. Such bastard veins have just enough resemblance to true veins to be used as a pretext of title against neighboring locations on the legitimate vein. They are generally lacking in walls, continuity, and in the normal uniformity of the true vein, and yet may have slips which are practically indistinguished from walls, and have some discolored matter and particles of ore, just enough to be dangerously similar to what is of value, only as it is unlike such things."

But, it has been urged, it is not competent for the plaintiffs, in these proceedings, to assail the validity of the "Paris Belle" location as a mineral claim because the defendants have secured a certificate of improvements which of itself affords conclusive proof—(1892, Cap. 32, S. 13., 1894, Cap. 32, S. 5.)—of the location of a lode or vein, and in all other respects concludes the title. Such certificate was obtained after due advertisement, and the plaintiffs might have filed an adverse claim against the grant of such certificate if they had desired to contest the defendants' right to receive it; but, not having done so, the matter is now res judicata, under 1892, Cap. 32, S. 14, which enacts that no adverse claim shall be filed after a period (which has now expired) and, "in default of such filing, no objection to the issue of a certificate of improvements shall be permitted to be heard in any court, nor shall the validity of such certificate when issued be impeached on any ground except that of fraud."

This reasoning would be very powerful if the plaintiffs were laying claim to the minerals (if any) to be found in the "Paris Belle" location; but this they are not doing, and cannot do under their subsidy act. Their ownership of the surface is expressly subject to the right of the free miner to acquire claims in accordance with the provisions of the law. The Mineral act prescribes a procedure to be followed, as between rival claimants to mineral ground and the minerals therein, and I take it that as between such parties the procedure adopted by the act must be rigidly followed, and, in a proper case, is exclusive. But this is not a case of that kind. This is a claim to eject the defendants from the surface, which prima facie, under the crown grant, belongs to the plaintiffs, and certainly does so unless the defendants can bring themselves within the exception as the owners of a mineral claim held as such prior to the 23rd March, 1893. This, of course, means lawfully held anterior to that date, and then held, not abandoned. There is nothing in the mineral act which I can discern dealing with anything else than mineral claims and mineral or mining rights arising under the statutes relating to mining. But here the plaintiffs make no claim to the mineral, as mineral; they are not, so far as appears, free miners themselves; they assert no rights upon which a free miner could base a contention. We must look to the scope of the act and not include within its purview cases which manifestly were not intended to be included by the legislature.

In Railton vs. Wood, L. R. 15, Appeal Cases, 366, Lord Selborne says: "On principle it is certainly desirable in construing a statute, if it be possible to avoid extending it to collateral effects and consequences beyond the scope of the general object and policy of the statute itself, and injurious to third parties with whose interests the statute need not, and does not, profess to directly deal." The very summary and unusual provisions of parts of the mineral act demonstrate the necessity of confining its operations within its scope. The owner of land knows that his title to the surface, at least, cannot be interfered with except by some person giving him clear and distinct notice of his adverse title. If he be trespassed upon, he has the period prescribed by the statute of limitations applicable to the case to bring his action of trespass. He owns the land as his own to him, and his heirs forever. With the holder of a mineral or mining claim the case is widely different. He holds the land for a special purpose only—that of exercising the statutable privilege of extracting the precious metal. There is nothing, then, unreasonable in the law, which confers the privilege, also exacting vigilance as one of the conditions upon which that privilege shall be enjoyed. Hence it imposes the obligation of watching for notices (not to be served personally or in the usual course, but by publication in the Gazette and by posting upon the ground), under which claims may at any time be made by unheard of parties, and then within thirty days after such notices imposes the further obligation of filing what are termed adverse claims and the bringing of legal proceedings. As before remarked, these conditions and obligations may be reasonable enough when imposed upon the free miner who holds nothing but a privilege upon the minerals conferred by the Act; but, to impose them upon a man who already holds prima facie title to the surface of the property, not for mining, but it may be, as in this case it is, for altogether different purposes, appears to me contrary to reason and justice, and not to be implied in the absence of clear and unequivocal statutory declaration. To carry such a contention to its full extent, the owner of an orchard or of ornamental timber lands might be deprived of his property simply because he had failed to watch the Gazette for notices of mining claims, of which he had never so much as thought. We have to avoid placing a construction upon a statute which is repugnant to reason and ordinary justice, and as remarked by Lord Coleridge in Regina vs. Clarence, L. R., 22 Q. B. D., 65: "In the construction of a statute, if the apparent logical construction of its language leads to results which it is impossible to believe that those who framed or those who passed the statute contemplated, and from which one's judgment recoils, there is in my opinion good reason for believing that the construction which leads to such results cannot be the true construction of the statute. See also Reg. vs. the Bishop of London, L. R. 23, Q. B. D., 429.

Mr. Taylor has referred me to the case of Dahl vs. Rannheim, 132 U. S. 260, where it was held that when a person applies for a placer patent in the manner prescribed by law, and all the proceedings are had which are required by the Statutes of the United States, and no adverse claims are filed or set up, and it appears that the ground has been surveyed and returned by the surveyor general to the local land office as mineral land, the question whether it is placer ground is conclusively established and is not open to litigation by private parties seeking to avoid the proceedings. But there is nothing in that decision in conflict with the reasons which guide me in this. There the defendant laid claim to three acres of a placer location of forty acres made by the plaintiff, the claim to the three acres being founded on the contention that the three acres contained a lode or vein which the defendant claimed as a mineral location. The dispute there was as between miners to the precious metals sought to be extracted from the property. As I have pointed out, the Act was intended to be conclusive of adverse rights of that character, but this is not a case of that kind.

To sum up, therefore, I am of opinion:

1. That the land in dispute was not, prior to the 23rd of March, 1893, held as a mineral claim.

2. That at the time of the location of the "Paris Belle" on the 3rd of January, 1895, the land was occupied by the plaintiffs for other than mining purposes, and that therefore the entry and location of the "Paris Belle" was, for want of compliance with the conditions as to security pointed out by Section 10 of the Act, illegal and void.

3. That the location was also void, on the ground that "rock in place" had not been discovered.

4. That the failure of the plaintiffs to file an adverse claim does not debar them from impeaching the validity of the defendants' title.

I therefore declare that the location and record of the "Paris Belle" mineral claim by the defendant Jerry was illegal and void, and that the defendants nor any of them are neither entitled to the rights and privileges of lawful holders of a mineral claim upon section 35, township 9, "A," Kootenay district, and that subject to the lawful acquisition in future of claims under section 8 of 55 Victoria, chapter 38, the plaintiffs are, as against the defendants, entitled to the exclusive use and possession of the before mentioned and described hereditaments. The plaintiffs will have judgment for possession of the said "Paris Belle" location. As the plaintiffs are not shewn to have sustained any, there will be no inquiry as to damages. The plaintiffs will recover their costs of suit, to be taxed in the usual way.

The British bark Edinburghshire, which arrived at Durban, South Africa, from Tacoma, had on board the captain and crew of the British bark Gitana, abandoned off Cape Horn, April 23, in a sinking condition. The Gitana was bound from Iquiqui to Hamburg with a cargo of nitrate. Advices from London, dated June 5, state that the Cape Horn scare continues and affords busy employment for brokers who deal in out of time risks. The British ship Gitana, as well as the Gowanbank, has been abandoned off the Horn, and it is to be feared that the list of casualties has not yet been exhausted.