
FRANK MADDEN (DEFENDANT).....APPELLANT ;

1899

AND

*Oct. 24.

CHARLES CONNELL (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF BRITISH
COLUMBIA.

Mining claim—Invalid location—Location in foreign territory.

If the initial post of a mining claim is in the United States territory
the claim is utterly void.

APPEAL from a decision of the Supreme Court of
British Columbia (1) affirming the judgment at the
trial in favour of the plaintiff.

The parties are respectively locators of mineral
claims in the West Kootenay District, B.C. which
overlap, and the action was brought to determine the
title to the ground covered by each claim.

The defendant was the first locator, but it was
proved and conceded that the initial post of his claim
was south of the boundary between British Columbia
and United States and so within the territory of the
latter. The courts below held that this made the
location invalid.

*PRESENT :—Sir Henry Strong C.J. and Taschereau, Gwynne,
Sedgewick and King JJ.

(1) 6 B. C. Rep. 531.

1899

MADDEN

v.

CONNELL.The Chief
Justice.*Robinson Q.C.* for the appellant.*A. F. May* for the respondent.

The judgment of the court was delivered by :

THE CHIEF JUSTICE (Oral).—We are all of opinion that it is impossible to get over the fact that the initial post on appellant's claim was south of the boundary. Two courts in British Columbia have so decided, which alone would be sufficient, but beyond that the fact is not only clear on the evidence, but is conceded by the appellant. The necessary consequence is that his claim is utterly void. As Mr. Justice Martin says, in giving judgment for the Supreme Court of British Columbia, the position is the same as if there had never been such a claim

The appeal must be dismissed with costs.

*Appeal dismissed with costs.*Solicitor for the appellant: *John Stillwell Clute jr.*Solicitor for the respondent: *P. McLaren Forin.*
