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IN THE WARDEN'S COURT) **HEARD: 11.10.94**
)
HELD AT COOLGARDIE)

BEFORE P. BUCK (SM) WARDEN

IN THE MATTER OF: **COOLGARDIE OBJECTIONS 67/934 AND 68/934 AGAINST PROSPECTING LICENCES 15/3600 AND 15/3601.**

BETWEEN: **COOLGARDIE GOLD NL**

(Objector)

and

COPPERFIELD GOLD NL

(Applicant)

Mr T.J. Kavenagh, of Kavenagh and Co., appeared for the Applicant.

Mr D.A.L. Johnston, of MacDonald Rudder, appeared for the Objector.

JOHNSTON: Please your Warden I appear on the behalf of the Objector in both matters.

KAVENAGH: Your Worship I appear for the Applicant in respect to both matters. Just one preliminary matter, your Worship, I wonder if I could seek leave to have my article clerk sit next to me at the bar table, my learned friend has no objections.

WARDEN: Yes.

KAVENAGH: Thank you, your Worship.

WARDEN: How does the Objector have the capacity to make this objection, when we consider that the land in question has been excised from his, or from its lease.

JOHNSTON: Well we say that any person can object of course under Section 41, I think it is Sir, but secondly we would say that and I would wish to address you about what the meaning of and what, the way you should interpret what an excision by the Minister is.

WARDEN: Well excision means excision I mean these funny legal equities as far as the Objector is concerned this ground is dead.

JOHNSTON: Well we would say as far as anybody is concerned the ground should be dead.

WARDEN: Well if that is the case the objection is based on the fact that, the, encroaches upon the mining lease of the Objector which it doesn't.

JOHNSTON: Well it does encroach.

WARDEN: No it doesn't encroach it's over land which is excised from the Objector's lease.

JOHNSTON: Which is a strata of land, Sir, above thirty metres.

WARDEN: The land in question has been excised from the Objector's lease. Therefore the Objector has no right over that land. So grounds one and two, well ground two certainly is not open to the Objector.

JOHNSTON: Well I would wish to address you in detail after I've called some evidence.

WARDEN: Well you can address all you like the simple fact is that this land has been excised from the Objector's lease.

JOHNSTON: Yes Sir, and I would submit to you that the excision made by the Minister was to facilitate the reserve.

WARDEN: Well I don't much care what it was there to facilitate, it is excised. It is not, therefore, part of the lease, it's as simple as that.

JOHNSTON: Well with respect, Sir, I don't believe that it is as simple as that.

WARDEN: Well I'm inclined that it is.

JOHNSTON: Well if I might.

WARDEN: That's the point, otherwise why excise it, if it doesn't mean anything then why say it is excised.

JOHNSTON: Well because if I was to show you today that the excision was wrong.

WARDEN: Well how can you do that. It's been excised and no objection was taken to the excision at the time.

JOHNSTON: In 1985 that's correct, Sir, and I concede that point but the fact is that may not and we submit does not affect your capacity to look at the excision in the terms for what it was and we would ask that if you can see that the excision should not have been made then.

WARDEN: Well I can't do that because its been done by the Minister.

JOHNSTON: Well that doesn't stop you from assessing the excision, Sir.

WARDEN: Well it does, Mr Johnston, I'm afraid that the ground has been excised by the Minister and that is that.

JOHNSTON: Well in my submission to you it's clear that the excision is void and should be treated as such.

WARDEN: Well look I'm afraid that the excision isn't void.

JOHNSTON: Well, I'm obliged to you for making that ruling, Sir, but all I can say is that you haven't heard the arguments or seen any of the evidence.

WARDEN: Well I don't know how any argument can convince me otherwise that the, this particular area of ground has been excised by the Minister and it cannot be operated by the Objector.

JOHNSTON: Well are you saying that the objection can't be entertained on that basis, Sir.

WARDEN: Correct.

JOHNSTON: Well there are other grounds of objection and I'd seek to show you that.

WARDEN: Well presumably you will be calling evidence.

JOHNSTON: Well I will be calling evidence, Sir, but I would also seek to show you that there was priority notwithstanding the objection that did flow to the holder of the overlying mining lease which is now the underlying mining lease of this ground and that the previous GML's of which a map will show there are three had no mining without consent clauses so that the ground the title to the ground was held by the Objector and that it was lost.

WARDEN: Why hasn't the Objector in that case done something about the excision before now.

JOHNSTON: Well the Objector has done something about the excision the Objector has written to the Minister asking him to change the condition but the Minister has refused.

WARDEN: Well that answers that question.

JOHNSTON: Well it does answer the question but the problem is.

WARDEN: Your objecting to this, to the application, you will now presumably call evidence in support of your objection.

JOHNSTON: Yes Sir, you can see that, the point I would make to you is that the encroachment with respect to this application. Paragraph two does not simply say that the the tenement encroaches the question bound up in paragraph two of the objection is whether or not you can have a thirty metre deep Prospecting Licence application. And to that extent I would wish to make submissions to you that that is not within the power and intent of the Act. So that in that regard, firstly if I may call witness, Trevor John Wilks, if I could ask for an order for witnesses to be out of court, Sir as to the marking out.

WARDEN: Well if, is it in issue that this marking out of the claims.

KAVENAGH: Well that was what I was going to ask your Worship I've no objection to witnesses out of court but I'm just questioning what are the live issues here is it just the objection to the marking out or are we also talking about the matters referred to in item 2 and 3 of the objection.

WARDEN: Well we'll just have a short adjournment perhaps we could get those issues clarified or we'll have unnecessary arguments about matters which can be consented.

COURT ADJOURNED

COURT RESUMED

JOHNSTON: Sir, the objection as you can see is cast in wide terms and the Objector does have evidence to call with respect to paragraph 1 and the Objector did intend to make submissions to you with respect to paragraphs 2 and 3. Obviously.

WARDEN: You can save your breath on paragraph 2. I thought I'd made that quite clear.

JOHNSTON: Well. Yes alright Sir, if that's your ruling, I must of course abide by it. With respect to paragraph 3, I would wish to address you, but without more, I would ask for an order for witness' to be out of court.

WARDEN: Anybody given evidence in this matter is to remain outside the hearing of this Court until called upon to give their evidence.

JOHNSTON: Sir I would call my first witness, Trevor John Wilks, Sir.

TREVOR JOHN WILKS SWORN IN

JOHNSTON: Full name is.....Trevor John Wilks.

Occupation Mr Wilks.....I'm field foreman for Coolgardie Gold.

And where do you reside.....312 Piccadilly Street Kalgoorlie.

Alright you are aware of the nature of these proceedings and the two applications that are currently before the Court.....I am.

Do you know the names of the two applications, the numbers sorry, the numbers of the two applications.....Yes, P15/3600 and P15/3601.

Did you have occasion to inspect the marking out with respect to.

WARDEN: Just a moment.

JOHNSTON: I'm sorry, Sir?

WARDEN: What were those numbers again.....P15/3600 and P15/3601.

WARDEN: Yes.

JOHNSTON: Have you prepared a map with respect to these tenements.....Yes, I have.

If you could just hand one up to the Court and then if you could identify firstly the Coolgardie Gold tenements.....Coolgardie Gold tenement is M15/152 it is in green and starts at the top, works it way to the west and comes down the western boundary and then heads in an easterly direction covering most of the reserve.

Alright. The reserve I think is marked.....Yes the reserve is marked in green, sorry orange.

And the two tenements the subject of these objections are marked if you could set out those.....Yes the one in pink beside the reserve is P15/3600 and the one in blue just south of that is P15/3601.

Have occasion to inspect the marking out of the two applications.....Yes I did.

Could you recall when that was.....It was on the first of the sixth, 1994 at approximately 2.00pm.

Alright, what did you see.....I drove to the north west corner.

Please just hold it up and point to where you went. So the Warden can see.....The north west corner of P15/3600 is the datum peg. I drove there and inspected the pegs and on arriving found an old wooden survey peg with a plastic bag with orange tape. I then removed, the bag had fallen to the bottom of the peg, I removed the bag and checked the Form 20 in the bag.

Did you identify the Applicant from the Form 20.....Yes, Copperfield Gold.

Were there any other documents on the peg at that time.....No it was only a Form 20.

Were you looking for any other documents.....I was looking for a Form 21.

WARDEN: Don't lead the witness, Mr Johnston.

JOHNSTON: Sorry Sir. Alright tell us exactly what you did next.....Only finding a Form 20 I then retied the bag, put the page back on the bag, retied them to the peg, I then went down to the datum of P15/3601, that's on the south west corner. I then felt the bag, it was a Coles bag, a little white bag, seeing there was only one document in there, I did not untie the bag. I then returned to the exploration office and got Brett Fyland, the West Australian Newspaper and a camera.

WARDEN: You did what.....I went back to the office.

JOHNSTON: Which is where.....It's at the Coolgardie Gold mine site, about 2km. I picked up Brett Fyland the exploration geologist, a camera and the front of the West Australian newspaper for that day. Then drove back to the datum of P15/3600, we then photographed the peg. I have the photographs here. We removed the plastic bag, photographed the single document inside, the Form 20. Retied it back on the peg.

You have those photographs.....Have those photographs.

Please hold them up and identify them.

KAVENAGH: Your Worship we have no evidence that this witness has taken these photographs as yet.

WARDEN: Well I thought he said he did.

KAVENAGH: He said we took the photographs your Worship.

JOHNSTON: I have the photographer. I ask that the photographs be marked and the photographer can come and identify the photographs.

KAVENAGH: If the photographer is going to be called, Sir.

WARDEN: Well he's identifying a photograph. I mean a photograph is a photograph I don't see any problem on that score. You're there when the photograph was taken.....Yes I'm in the photograph.

JOHNSTON: Just how many photographs are there.....There are four photographs.

Just take us through each one if would you....That's the first photograph of the Form 20 tied to the peg at the bottom.

JOHNSTON: Show my friend if you just turn the photograph around so that he can see.....Then there's another photograph from similar angle. The next photographs show a Form 20 in a plastic bag as the only form in the plastic bag.

I would wish to tender those Sir, unless my friend has an objection regarding the photographer.

KAVENAGH: No objection your Worship.

WARDEN: It will be A 1 to 4

JOHNSTON: Then what did you do, Mr Wilks....I then drove down to the datum of P15/3601. We photographed the datum peg and removed the papers and photographed the Form 20 with no Form 21. They are those photographs there. Again we had the newspaper with the datum peg. With a plastic Coles bag at the top. That's also the same photograph but a bit blurry. We then removed the plastic bag with the Form 20 with no Form 21. We then retied the bag and reported back to the office.

And this was all on what date.....On the first of the sixth at approximately 2.00pm.

WARDEN: This 3601 is outside your.....Yes

Coolgardie Gold area. Whatever it is, yes.....Yes it's outside our tenement, yes. M15/152.

Yes.

JOHNSTON: I tender that second bundle of photographs, Sir. They could be exhibit 2. Exhibit 3, sorry.

WARDEN: B one to three.

JOHNSTON: B one to three, I'm sorry, Sir. That's the evidence of this witness, Sir.

KAVENAGH: Mr Wilks, what's your job at Coolgardie Gold.....I'm an Exploration Field Foreman.

And was that.....Exploration Field Foreman.

Does that involve looking at tenements.....Yes.

Yes and does that involve applying for tenements.....No.

KAVENAGH: Doesn't involve applying for tenements. Does that involve looking at newspapers, the advertisements, the mining notices.....I do look at them but that's not my responsibility.

Not your responsibility. When did your first become aware that Copperfield Gold had made application for two Prospecting Licences, 3600 and 3601.....I wouldn't be sure of the exact date but it would have been just before the first of the sixth.

Right and who.

WARDEN: Well why do you want to, I suppose there's some sort of definate evidence concerning that.

KAVENAGH: Your Worship sometime between the pegging of the tenements and the time of Form 21 was put on the post and there will be, sometime between that and when this person examined the post.

WARDEN: Well put it to him. Well he doesn't know when the.

KAVENAGH: You don't know when the company found out about these.....No.

Who told you to inspect these tenements.

WARDEN: Well do you want him to give that evidence.

KAVENAGH: Yes I have no objection your Worship.....Exploration Manager.

And his name is.....Jim Laurie.

Laurie.....Laurie.

The evidence will be that one Chuck McCormick put a Form 21 on both the datum posts. Now that happened on the 27th of April 1994, sorry the 29th of April 1994. Can you rule that out positively that that happened.....Well there was no evidence there.

WARDEN: Well he hasn't said that has he.

KAVENAGH: I'm saying isn't it possible that if the posts if the Form 21's were put on the posts back in April that they could have been removed.

WARDEN: Well we don't want him to speculate on it. He just said what he saw on the 1st of June or whenever it was.

KAVENAGH: Yes. Did you examine those datum posts between the 29th of April 1994 and the 1st of June 1994.....No.

No further questions your Worship.

JOHNSTON: I've no further evidence, Sir.

WARDEN: Thank you Mr Wilks, that is all.

JOHNSTON: With respect to the marking out that is the evidence of the Objector, Sir. I would before closing the case wish to submit three, sorry four tenements, three of which have been certified.

WARDEN: Well if you've closed your case does the Defendant wish to give evidence. If you've closed perhaps the Defendant might wish to.

JOHNSTON: I'm sorry, Sir, before I close the case formally I'd like to hand up some exhibits that are certified copies of mining tenements. Firstly, a certified copy of 15/152 mining lease and the original three GML's. I should point out that you can see the three GML's are set out on the map that underlie.

WARDEN: Yes. What happened to those GML's Mr Johnston.

JOHNSTON: The GML's were applied for and granted to the Objector in Mining Lease 15/152. And I simply wish to hand up for the Court records, Sir the three GML's and the mining lease, Sir as certified. One of the tenements has not been certified although it was sought to be certified but I would undertake to have it certified should you require, Sir.

KAVENAGH: Your Worship I don't see the relevance of the GML's. I don't see what that's got to do. The mining lease 15/152 is the existing mining lease, previous, I can't see the relevance of the previous GML's. Perhaps my learned friend could explain it at this stage.

JOHNSTON: Well they go to the.

WARDEN: The GML's have been consolidated into this mining lease. Well they no longer apply.

JOHNSTON: Well they no longer apply but they also set and the reason why I also want to submit them is that they do set out the conditions under which the land was previously.

WARDEN: But any conditions they are now incorporated in the mining lease and they.

JOHNSTON: Well they are, Sir, but I would wish to have them on the Court record as a matter of which is important to the Objector, the third paragraph of the Objectors application sets out that there is submissions to be made to you regarding the confirmation of the tenement with the Act and Rules. And in my submission the three underlying GML's set out what ground has been previously applied for and what ground has been granted.

WARDEN: The land is now subject to the conditions set out in this mining lease 15/152.

JOHNSTON: Yes Sir. Well as part of the Objectors case I would wish to submit them, Sir. I don't believe there is any prejudice suffered in submitting them.

WARDEN: I can't see any relevance.

JOHNSTON: Well I do say they are relevant. You've made a ruling with respect to paragraph two and I do say they are relevant to that and to 3.

WARDEN: How can they be relevant they are no longer in existence. The land is now subject to this mining lease 15/152.

JOHNSTON: Well you see you had made a ruling with respect to paragraph two. I would submit to you that they are relevant.

WARDEN: Yes but I mean to say the GML's no longer exist do they. The land is now subject to this mining lease and any restrictions or conditions which apply to the land contained in this mining lease. Whatever stood before under the GML's is no longer relevant.

JOHNSTON: Well that's one way of looking at it, Sir but there is another.

WARDEN: Well it's the only way, what relevance do the GML's have.

JOHNSTON: Well the relevance of the GML's have is that.

WARDEN: No longer exist.

JOHNSTON: The ground subject of the reserve or a large proportion of it as set out in a map was held by this Objector.

WARDEN: I don't doubt that for one moment but under the mining lease that land has now been excised.

JOHNSTON: Well yes it has, Sir.

WARDEN: And that's subsequent to the GML's so as things stand now subject to the conditions of the mining lease 15/152.

JOHNSTON: Yes they do but my, what I did wish to address you on was the applicability of those conditions in determining the availability of ground for future applicants. But your Worship has said that you're not prepared to entertain that argument.

WARDEN: Now I'm not interested in future applicants as far as you're the Objector is concerned this is paragraph five in the conditions state that the complete excision in any portion encroaching upon State Battery Reserve Number 9435 to a depth of thirty metres. Now that is plain as a pike staff you can't, how can you possibly say anything else than complete excision means complete excision. What do you say it means, part or something or doesn't mean what it says.

JOHNSTON: Well we say that the excision, well the excision may mean that in terms of the mineral rights granted pursuant to the lease they are excised.

WARDEN: As far as this lease is concerned the lease holder, the land, the Battery Reserve is excised from the area of the lease.

JOHNSTON: Yes Sir but does that mean that the boundaries change. I mean the proposition is whether the boundaries of the tenement therefore change and my proposition to you is that they do not.

WARDEN: Well thank you, Mr Johnston. Are you going to call any further evidence or closing your case or what's happening.

JOHNSTON: No I'm closing the case, Sir, I don't wish to call any further evidence with respect to the failure to comply with the Act.

WARDEN: Thank you. Yes Mr.

KAVENAGH: Those matters, Mining Leases tendered exhibits.

WARDEN: Beg your pardon.

KAVENAGH: Are they given exhibit numbers your Worship. The mining lease I have no objection to.

WARDEN: The Mining Leases do not indicate. Well they can put them in as "C" I don't want to really take that much further but.

KAVENAGH: Thank you, your Worship. Your Worship the Applicant will be calling two witnesses. The first witness is Kenneth Raymond McGuire.

KENNETH RAYMOND McGUIRE SWORN IN

KAVENAGH: Is your full name Kenneth Raymond McGuire.....Yes.

And you live at 9 Chudleigh Street, Fremantle spelt C-H-U-D-L-E-I-G-H .....Yes.

Right and what is your occupation.....Licensed Surveyor.

Right and how long have you been a Licensed Surveyor.....In excess of twenty years.

Alright. And are you aware of these proceedings and what they relate to.....Yes.

And are you aware that they relate to Prospecting Applications 15/3600 and 15/3601.....Yes.

And do you know the Applicants name.....Yes.

The Applicants name is.....Copperfield Gold NL.

Yes and do you do business for that company.....Yes.

And what business do you do with that company.....Tenement Manager.

And in your role as Tenement Manager do you have anything to do with these applications.....Yes.

What did you have to do with the applications.....I actually pegged the ground.

Right.....And prepared the applications.

KAVENAGH Right. How did you become aware of this ground.....Just from research in the general area. We're interested in of course all that area around there. Copperfield have got tenements which they are working in the area.

Alright. Could you just have a look at this document. Describe to his Worship, what that document is.....Yes it's a Lansens Surveys original plan.

Right. Of what.....Of Location 67 Ngalbain and Reserve 9435.

9435 and as a Licensed Surveyor can you tell us something about that reserve.....The fact that the reserve is surveyed. Surveyed and there are field books and official documents lodged with the Lands and Surveys.

Right.....So it actually describes the area of land contained in Location 67.

Right and what is Location 67. If you could just explain to his Worship what.....Okay that is a reserve for mineral processing.

Alright. Sir, I seek to tender that plan as in fact a certified copy of the reserve.

JOHNSTON: No objection.

WARDEN: What reserve did you say Mr Kavenagh.

KAVENAGH: Reserve number 9435.

WARDEN: Reserving what.....It's a reserve for mineral processing.

Pardon.....It's a reserve for mineral processing.

KAVENAGH: Your Worship, I don't think this is an issue the question.

WARDEN: What has it got to do with this matter.

KAVENAGH: Your Worship.....It's actually a surveyed location which I used to describe the ground that I'd be applying for as a mining tenement.

Your Worship, perhaps if I could explain the situation.

WARDEN: Well you have a witness, get him to explain the situation. What's that got to do with this business.....Well the actual within the Mining Act, we can actually describe tenements along already surveyed boundaries.

Well what did you do.....And that's what I described.

Described them where.....Described from the datum identical to survey of Location 67 and Reserve Number 9435.

KAVENAGH: And did you go to this area depicted on this map.....Yes.

And where did you go to.....We actually applied for two sections because the ground was separated by a road. Datum for the top section would be 3600, that was the north west corner, concrete survey marker in the ground.

Yes perhaps if you could just indicate to his Worship on the map where that was.....Surveyed the concrete peg in there.

The witness is indicating the north west corner of the reserve.....The northern section of the reserve.

The northern section and what did you find at that point....There is a concrete survey mark there which is got stamped on it Location 67.

And what did you do at that point.....That was the datum peg for.

What did you do with the datum peg.....We actually we put in wooden survey mark, wooden stake.

When you say we, were you by yourself or did you have somebody with you.....No, there would have been my offsider with us at the time.

Right and what did you do at that point.....We just put the datum peg in and placed the Form 20 on it.

Alright, when you say.

WARDEN: Placed the datum peg in and did what.....And attached the Form 20.

Thank you.

KAVENAGH: Thank you Worship. Attached the Form 20.....Yes.

KAVENAGH: And.....In a plastic bag.

Alright. Could the witness be shown photograph A 1-4.

WARDEN: Was that going in. Is that map going in.

KAVENAGH: Yes. I asked that to be tendered your Worship.

WARDEN: Exhibit 1.

KAVENAGH: Exhibit one, thank you your Worship. These photographs have been produced into evidence by the Objectors witness. Could you describe what they are.....Yes that was the peg and the papers that I placed in the ground.

WARDEN: Pardon.....That was the peg and papers that I would have placed in the ground. You can't exactly say it was a peg but certainly that's the right spot.

Right. That's photograph A-1 or something isn't it.

KAVENAGH: A-1 your Worship, yes. So and A-2.

WARDEN: Well A-1 is that the photograph of the Form 20.....That would have been, I can't tell what was in the bag it should have been Form 20, yes.

On the peg.

KAVENAGH: And it's also a peg on that photograph.....Sorry.

There's a peg on that photograph and you say your evidence was that's probably the peg that you put in the ground.....That's right.

Thank you. Put those photographs back. What did you do after you put that peg in the ground.....We would have prepared the Form 21 which is the form that has to be lodged as an application.

Right and.

WARDEN: You did what.....Prepared the Form 21 and this would have been back in the office.

KAVENAGH: Where's your office.....270 Egan Street, Kalgoorlie.

KAVENAGH: So your evidence is that you pegged the land, you put the Form 20 on and you've gone back to Kalgoorlie, prepared the Form 21, what did you do with it then, the Form 21.....The Form 21 would have been put on by my partner.

No, what did you do with the Form 21.....Well we made copies of it.

Copies of it, yes.....And left it at the office for placing back on, well being lodged on the Mines Department.

Did you give the Form 21 to anybody.....Yes, my partner.

And who is your partner.....Chuck McCormick, Charles McCormick.

Charles, known as Chuck McCormick, alright. And when you say the Form 21's which Form 21's are they.....Well it's just, we actually prepare one Form 21.

Yes.....Which is prepared for lodging at the Mines Department.

Yes.....Once that's lodged we get copies back from the.

WARDEN: Well that's what you generally do, what happened in this case, Mr, did you take these documents to the Mines Department.....No.

Right well don't tell us what anybody else did will you. Unless you were there.

KAVENAGH: Perhaps if you could just take a look at these two documents.

WARDEN: Well unless he prepared them and unless he actually, physically did what he says happened to them then he shouldn't be giving the evidence should he.

KAVENAGH: Yes your Worship. He signed these forms.

WARDEN: He may have signed them but do you sign them in the office, what happened to them then did you say.....I would have.

Did you take them to the Mines Department.....No, I don't think so, no.

KAVENAGH: Mr McCormick will be called to give evidence your Worship.

WARDEN: Well yes let Mr McCormick give evidence. Don't let him give evidence for Mr McCormick.

KAVENAGH: Yes your Worship. I think it might be appropriate to put these applications for the mining tenement to this witness. Have a look at these two documents describe what they are please.....They're Form 21's. Written in my handwriting.

Look at the first one. What mining tenement does that relate to....3600, 15/3600.

Yes and did you prepare that document.....I did.

And is your signature on that document.....It is.

And is that a copy of the document you said you gave to Mr McCormick.....Yes.

Right. Sir, I seek to tender that as a copy of the application for Prospecting Licence 15/3600.

WARDEN: Yes.

KAVENAGH: Exhibit 2, your Worship.

WARDEN: Yes.

KAVENAGH: Have a look, hand that to the Clerk, look at the second document, describe what that document is.....That's a Form 21 for Prospecting Licence 15/3601.

Right. Did you prepare that document.....Yes.

And that's your signature on the document.....Yes.

And is that the document that you said, or is that a copy of the document that you said you gave to Chuck McCormick.....Yes.

I seek to tender that as well your Worship. Now did you lodge the Form 21's at the Mining Registrars office.....No, Mr McCormick.

Right, don't tell us what Mr McCormick done, has done. Did you have anything else to do with these applications.

WARDEN: Don't lead the witness will you Mr.....Yes I would've done the advertising, taken a copy of the Form 21 to the newspaper.

KAVENAGH: Alright. Take a look at this document. Describe to his Worship what that document is.....A copy of the full page of the newspaper add. Mining notices, West Australian, Wednesday.

On what date.....I can't read it. It's got a stamp down the bottom. May the 11th.

May the 11th. And is there anything of relevance on it.....Somewhere in amongst all the mining notices will be the two that we advertised. 3600 is certainly on there.

And where does that appear.

WARDEN: Well have we got a biro or something to mark it off.

KAVENAGH: Your Worship I have a yellow marker here.....And 3601.

The witness has marked on that newspaper where two advertisements of the Prospecting Licences applications appear. Your Worship, I seek to tender that page from the West Australian dated the 11th of May 1994.

WARDEN: Exhibit 4.

KAVENAGH: Now did you have anything else to do in relation to these applications for Prospecting Licence.....I would have of course have presented an affidavit to the Mines Department saying that we had advertised and placed Form 21's on.

Your Worship, my learned friend advised me that there's no issue in relation to what's on the file there and there's no issue as to the Security Form that's been filed in relation to these applications.

WARDEN: Very well.

KAVENAGH: Mr McGuire you've said that you did some research into this reserve can you tell us a bit more about this reserve.....Well it's a reserve that which has the original State Battery for Coolgardie on it.

And do you know whom that land is vested in.....It's in the Mint.

WARDEN: Well that's really a decision for the Court isn't it. No matter what the witness is telling you is the land should be evidence from the records.

KAVENAGH: Yes your Worship it's a question of law in whom it's vested in I don't think it's any issue that it's vested in the West Australian Mint. And I can address you in relation to that.

WARDEN: Well then it better be officially noted. We don't want the witness to give his opinion on the matter.

KAVENAGH: Have a look at this document please. If you look at page three thousand four hundred and eighty-four of that Government Gazette dated the 9th of September 1988.....Yes.

And if you look at the right hand bottom corner could you tell his Worship what appears there.

WARDEN: Page what.

KAVENAGH: Three four eight four your Worship.....It says a reserve number. Maybe I'm on the wrong page. I can't see the relevance of that, am I on the right page.

KAVENAGH: Your looking on page three four eight four.....Yes.

WARDEN: Well it's in anyway, if your going to put it in, the same evidence of what it is.

KAVENAGH: Well yes your Worship. Alright, I'll seek to tender the Government Gazette of the 9th of September 1988. Your Worship if you have no objection I'd like to tender a copy of the Government Gazette so that I can contain the Government Gazette in my records.

WARDEN: Yes.

KAVENAGH: So I seek to tender a copy of the Government Gazette. I'll address you in relation to that at a later time your Worship. Perhaps if you could just have a look at this document. Describe to his Worship what that document is.....The lease agreement between Western Australia Mint and Ian Arthur Kean.

Ian Arthur Kean K-E-A-N.....K-E-A-N.

KAVENAGH: And relating to what land.....It will be relating to the Reserve 9435.

Yes. Your Worship I seek to tender that document.

WARDEN: Why is that relevant.

KAVENAGH: Your Worship this document is a lease from the West Australian Mint to one Kean of the Reserve.

WARDEN: And how does this put the document in.

KAVENAGH: He identifies it as that document. He's not a party to the document but he can produce and describe what it is.

WARDEN: How can he do that.

KAVENAGH: The witness is aware of the contents of this document because this, the Applicant in these proceedings obtained an option to take an assignment of this lease between the West Australian Mint and Ian Arthur Kean. The witness has given evidence of this knowledge of this reserve.

WARDEN: How has he known about the arrangement between the Applicant and the mint or anybody else. Is he a party to these negotiations or this agreement.

KAVENAGH: He, I understand him to be a party.

WARDEN: Well yes I know.

KAVENAGH: Yes, alright your Worship. Perhaps I can ask him that question now.

WARDEN: Well it might be an idea. Might have some bearing on the thing.

KAVENAGH: In relation to this reserve, you said that you were the tenement manager for the Applicant, were you involved in negotiating between.

WARDEN: Don't lead the witness will you Mr.

KAVENAGH: Were the, are you aware of any negotiations between.

WARDEN: Again, that's just leading in a different way but it's still leading. I think you might be in danger if you keep asking him if he is aware of anything.

KAVENAGH: I was going to ask him. Well he's given evidence that he's aware of this reserve and he's given evidence.

WARDEN: Yes. Well we all know about the reserve and I can probably say that.

KAVENAGH: Yes and he can probably say with my submission your Worship who he knows to be vested in this land.

WARDEN: Well.

KAVENAGH: Had you known who's vested in this land.....The land is vested in.

WARDEN: Lets mark this on this map will you the reserve that everybody's talking about. Just mark off the reserve Mr.....The reserve is the part that's just bordered in.

The whole lot....Yes.

So it includes, the reserve includes both 3600 and 3601.....That's right. The little serif going across the road indicates those pieces of the land that are part of the same location or same reserve.

Yes don't confuse the issue. All I want to know is can you delineate on that plan the outline of that reserve.....That's already delineated by the border. It's marked on this plan.

But there's no reference on this plan or anywhere else to this particular reserve. Number 9435 unless I'm going blind.....Yes in the heading called locations. Location 67 and in brackets reserve symbol 9435. That's land and surveys symbol for a reserve.

Are all the land on that map part of the reserve is it.....Yes.

Well what is that pink area.....The part of the pink area the other part are just survey abutals or just showing how the actual survey was tied into the main survey grid area.

WARDEN: Alright.

KAVENAGH: So your evidence is that the land delineated in pink on Exhibit 1 is Reserve 9435.....Yes.

Yes and your evidence is that land is vested in the West Australian Mint.....Yes.

KAVENAGH: And how do you know that.....I've researched that.

Whereabouts.....At the, well spoken to the West Australian Mint as I've cited on this document here.

Right so you've spoken to the West Australian Mint. Who did you speak to there.....Darryl Trainer.

Right and what did your enquiries there reveal.

WARDEN: Well he's not going to give evidence on that does he.

KAVENAGH: Were you, at the Mint, were you given any documentation.....No.

Did you subsequently come into possession of any documentation to which the Mint was a party.....Yes.

In relation to this reserve.....Yes.

And you have a document in front of you. Well what document did you come into possession of.....I've had a copy of this lease agreement between the Mint and Ian Arthur Kean.

WARDEN: And what is the date of that document.....5th of February 1991.

KAVENAGH: And when did you come into possession of that.....Couldn't tell you exactly but months ago.

Months ago. This year.....Yes.

On what day did you peg these Prospecting Licences.....27th of the fourth.

In what year.....1994.

Yes and did you become in possession of this document before or after then.....I can't remember.

And what did you do as a result of coming in to possession of this document.....As tenement officer we approached the holder of the lease, Ian Arthur Kean, we've negotiated an option with him to be able to explore the land.

And in anything come of those negotiations.

JOHNSTON: Not sure the relevance of this, Sir.

WARDEN: We're not really concerned with this are we. We're concerned about whether or not it was properly marked off or not.

KAVENAGH: We're concerned with that your Worship but we're also concerned and I think the objection is still alive whether the Applicant is entitled to the land. Whether it's open for mining as I understand it. That's still live issue. Notwithstanding your ruling earlier made. The relevance of these documents is that the Applicant for these Prospecting Licences has negotiated to obtain an assignment of the lease of the land which it seeks to have granted to it.

WARDEN: Well if that's the case whys he bothered to mark them out. Why is applying then to for the land if he's, his application is successful then he becomes, the Applicant becomes vested with the land. If it's already leased to somebody or vested in the Perth Mint how does he apply for the mineral lease.

KAVENAGH: The answer to that your Worship is this. That this land is still crown land because.

WARDEN: Either he's negotiating to purchase or somehow be vested with an existant right of tenement or lease, hold or something or he's applying to, for a mineral lease. He can't do it both ways can he.

KAVENAGH: Well with respect your Worship I think you can have it both ways because if the land was.

WARDEN: If the land is held or is vested in the Perth Mint then we're at cross purposes aren't we.

KAVENAGH: Well it's still.

WARDEN: But it's certainly not the Objectors land, not his land and he can't be granted if he says that's the case, then how can he be granted, how can his application be successful.

KAVENAGH: Right. Your Worship, Section 19 of the Act, provides that any crown land is open for mining sorry Section 18 of the Act.

WARDEN: Well there's nothing new about that. But what I'm saying is this land, that you can't march onto Crown land with pick and shovel and a bucket and start mining. You have to be

granted an appropriate lease or before you can do that. Now if for instance the leasehold has been granted and I wanted to purchase it subject to the Act I can say purchase the lease hold. Now they're negotiating to purchase the lease hold or whatever it is that the Mint has over this land then how does he apply to have it granted to him exclusively. I mean you can't have it both ways.

KAVENAGH: The Applicant needs to have a mining tenement under the Mining Act.

WARDEN: But he's saying, he's saying Mr. that this land is vested in the Royal Mint.

KAVENAGH: Yes, yes.

WARDEN: Then how does he apply to have the, because if his application is successful then he excludes the title of the Royal Mint does he.

KAVENAGH: No because it is vested in the.

WARDEN: What is the relevance of this document then.

KAVENAGH: Well your Worship the relevance of this document is that this land is vested in the West Australian Mint for the purposes of mineral processing. It is not vested in the West Australian Mint for the purposes of prospecting.

WARDEN: Has a notice been sent to the Mint.

KAVENAGH: Yes and I intend to tender a letter from the Mint saying they consent to these applications.

WARDEN: Well that solves that problem, provided, well we don't to this business about the negotiations between the Mint and anybody else. We're concerned with the applications before us today as to whether or not this land was properly marked off. Or marked off in accordance with.

KAVENAGH: If that is the only issue your Worship then.

WARDEN: Correct. So don't lets cloud the issue with unnecessarily irrelevance. There'd be no point in putting in this document in any how putting it in second hand.

KAVENAGH: So do I understand the position your Worship. That in relation to the objections that items 2 and 3 no longer apply, because if they.

WARDEN: I don't know, I must be speaking in Chinese or something, I thought I said that the this land has been excised, excised, do we all know what excised means? Because we happen to be sitting in the Warden's Court we're dealing with the Mining Act and the Regulations.

KAVENAGH: I agree with your judgment absolutely.

WARDEN: Obscure as they may be, we're still speaking the English language. Understand. Excised means excised. If the things been excised it means what it is. The ruling is the land having been excised from the Objector's mining lease they cannot say that it hasn't been excised. So really the basis of the objection is that the land wasn't properly marked off in accordance with the Act and the Regulations.

KAVENAGH: Alright if that's your ruling.

WARDEN: And you have the evidence of the Mr Wilks, telling what he saw on the two datum pegs.

KAVENAGH: Your Worship if that's your ruling I quite agree with you that none of this evidence is relevant at all.

WARDEN: Correct but it wouldn't have been relevant anyway. So we can forget about this.

KAVENAGH: We can take those documents back your Worship.

WARDEN: Certainly, by all means.

KAVENAGH: I will seek to however, to tender this letter your Worship.

WARDEN: In all these matters if there was some sort of discovery or something early in the piece we wouldn't have all this mess.

KAVENAGH: Yes unfortunate in this jurisdiction there's no real procedure for discovery in particulars in relation to these applications your Worship. Mr McGuire could you please describe.

WARDEN: Well if that was the case what happened in that other thing where somebody applied for discover, go on Mr.

KAVENAGH: Mr McGuire could you explain what that document is.....It's a letter from the Western Australian Mint.

WARDEN: Addressed to whom.....Addressed to Copperfield Gold 270 Egan Street.

And what's your, you're the tenement manager for this company. Are you otherwise involved in the Company, a director or something along those lines, beg your pardon.....No, certainly not.

I'm not really certain you should be giving evidence for the company. I mean you can give evidence as a tenement manager, but about giving evidence on behalf of the company though.

KAVENAGH: Well he is a consultant to the company your Worship.

WARDEN: Well I can be a consultant to the company doesn't mean that I can necessarily involve the company or speak on behalf of the company. He might be a consultant as a tenement manager it doesn't necessarily mean he can be involved with the business dealings of the company does it.

KAVENAGH: No but he has given evidence that he is involved in tenement management.

WARDEN: Correct.

KAVENAGH: And now.

WARDEN: Well that doesn't mean, put in a letter that was addressed to the company.

KAVENAGH: Well with respect your Worship if this is within his knowledge as a consultant to the company and the company can only act by its employees and agents then it is a matter which he can give evidence of.

WARDEN: Well he didn't say he was an employee, he said he was a consultant.

KAVENAGH: Yes but as a.

WARDEN: Well Mr Johnston do you.

JOHNSTON: Well Sir, I just don't think he can give this evidence. He's clearly not the director or a director, he's a consultant that's relevant to his expertise.

WARDEN: We can always adjourn it and call somebody from the Mint, I suppose. Yes there would be a question of costs involved.

JOHNSTON: I'm not sure that this is at all relevant to the issue. I mean if your Worship thinks it's relevant well maybe we must go that way and put it in but I just can't see the relevance of it.

WARDEN: Well if you agree to it being put in you can, otherwise we can adjourn and call up somebody from the Mint and the parties of course would.

JOHNSTON: If I could instructions with respect to that Sir.

WARDEN: Bear the expense of that.

JOHNSTON: Yes.

WARDEN: If what it turns out to be is what appears on the face of the letter.

JOHNSTON: Yes, Sir. I don't have problems with that going in, Sir.

KAVENAGH: Yes. I seek to tender that document your Worship. That's the evidence of this witness, Your Worship.

WARDEN: Thank you, yes. Mr Johnston.

JOHNSTON: When did you first become aware of this piece of ground becoming available.....I can't remember exactly but it was just prior to when we approached Ian Kean etc.

How did you become aware of it. Was it what somebody told you.....No certainly wasn't. I was doing research for, on behalf of Copperfield for tenements in the area.

Alright. What are the dimensions that you are applying for in your mind. Of ground that you are applying for.....Of the ground. Well we are applying for the whole reserve.

For the whole of the reserve.....Yes.

What is the depth that you are seeking.....30 metres from the surface.

JOHNSTON: So that. Alright, 30 metres from the surface. Why 30 metres.

WARDEN: I really don't want him to give evidence. It's there in black and white so whatever he says has no bearing on the matter.

JOHNSTON: Well as the Applicant, agent in marking it out, I would say to you Sir, that it is important to what he understands the dimension of the ground.

WARDEN: It's not doesn't matter what he understands, it's what the law says or what anything else says, the regulations.

JOHNSTON: Your Worship I would wish to ask him about the dimensions because you do have conditions as I understand it that you can apply to the reserve.

WARDEN: Sir, I don't want him interpreting the Act or the Rules or the Regulations or anything else. That is not his job as a witness is it.

JOHNSTON: Well he is a licensed Surveyor.

WARDEN: Mr, you don't seem to understand. I make the decision on the law. I don't want to be told the law by the witness.

JOHNSTON: Please you Sir. Have you been out to the ground since you marked it out.....Yes.

When was the last time that you were there.....I was working up here last week.

Right. How many times have you been there.

WARDEN: Last week did you say.....Yes.

JOHNSTON: Can you remember the date last week.....No.

How many times have you been there since marking it out.....Many times.

Many times.....We've got a drilling program going adjacent to it.

WARDEN: Pardon.....We've got a drill program going adjacent to it. We've got the ground.

WARDEN: Well it might be adjacent but it doesn't mean on does it.

JOHNSTON: So.....Well I've been on the Reserve talking to Ian Kean, so yes certainly been there many times.

And can you. When you say many times, once, twice a week.....Some weeks could be half a dozen times over the weeks. Not at all.

Have you inspected your marking out.....No.

No. So that the only time that you've had a look at the datum pegs for the two tenements that you applied for was when you marked them out.....I would have walked past them but I certainly didn't have a look at papers or anything, no.

Alright.

WARDEN: You walked past them, anything. First and last did you look at the pegs and or paper.....The pegs on one datum post. I was there last week and certainly the peg was still there and the plastic bag with the paper was still there.

JOHNSTON: But you didn't look into the plastic bag.....No.

No. I've no further questions, Sir.

WARDEN: Yes. Thank you Mr.

KAVENAGH: Yes. Mr McGuire when you looked at the pegs you said that you looked at one of them. Which peg did you look at.....The datum peg for 3600.

That's for the datum peg for P15/3600. Thank you, your Worship. No further questions.

WARDEN: Yes.

KAVENAGH: One further witness your Worship. Charles David McCormick.

Your Worship this witness apologises for his dress. We didn't think this was any issue and. Yes thank you your Worship. We didn't think these matters would be an issue your Worship.

CHARLES DAVID McCORMICK SWORN IN

KAVENAGH: Is your full name Charles David McCormick.....Yes.

And where do you live.....33 Lyall Street, Kalgoorlie.

Kalgoorlie. And what is your occupation.....I'm a geologist.

Yes and you are aware of these proceedings.....Yes.

And what they relate to.....Yes I am.

Yes. And that they are related to application for Prospecting Licences.....Yes.

And do you know the numbers of those Prospecting Licence applications.....3600 and 3601.

Alright. And do you know the applicants name.....Copperfield Gold NL.

And do you have any association with Copperfield Gold NL.....I work for them.

WARDEN: Pardon.....I work for them.

KAVENAGH: And are you a consultant with that company.....Yes I am a consultant.

Now in relation to these applications when did you first become aware of these applications.....When Ken McGuire initially pegged them.

Yes and we don't want you to tell us what Mr McGuire said to you in relation to pegging but did you do anything after you spoke to Mr McGuire.....Ken gave me a series of.

WARDEN: When was this Mr McCormick.....Late April, late April.

You did what.....Ken McGuire gave me the papers, Form 21's to bring down to Kalgoorlie and lodge.

KAVENAGH: Alright. Could the witness be shown Exhibits 2 and 3. If you have a look at those documents, describe what they are.....Form 21's for the Prospecting Licences that we applied for.

Have you seen those before.....Yes I have.

KAVENAGH: Have you seen the original of those documents before.....Yes I have.

And when did you first see the original of those Form 21's.....28th.

28th of what month.....April, April.

In this year.....Yes.

Alright and did they come into your possession.....Yes they did.

Alright what did you do with those Form 21's.....I brought them down to Coolgardie and lodged them at the Mines Department and then took them out.

Alright what , when you lodged them at the Mines Department what did you do.....I paid for the fees and various things.

Alright was there any other documents attached to the Form 21's.....There were maps attached to both showing the locations of the applications.

Alright and do you remember who served you at the Mines Department that day.....I believe it was Dave Brooks.

Yes and that's Dave Brooks and you know him to be what in the Mines Department.....Mines Department head.

Right and did Mr Brooks give anything to you.....He gave me a Security form and I think that was all because yes a Security form for each of them.

Alright and did he give you anything else.....Oh got back the actual original and a copy and a receipt I believe. I think that was everything.

Did you do anything with those document.....I took the Form 21's and put them on pegs after that.

Alright. In relation to.

WARDEN: Took Form 21 where.....Out to the leases and put them on the pegs, corner pegs.

WARDEN: How did you put them on the pegs.....I put them in a plastic bag and I used flagging tape to wrap them around and secure them to the things.

KAVENAGH: How did you locate the pegs.....Well I already knew where they were.

How did you know where they were.....Well basically I had been shown by Ken McGuire.

When you arrived at the pegs, you said you put the Form 21 in the plastic bag, did you bring the plastic bag with you. When you arrived at the peg was there a plastic bag.

WARDEN: Well that's the same

KAVENAGH: Same thing, yes. Was there anything attached to the peg when you arrived there.

JOHNSTON: Well that's leading the witness.

WARDEN: I don't know about that. It's not objectionable.

KAVENAGH: When you arrived at the peg what did you observe.....Form 20's were in had if I remember, tape and they were in plastic bag.

Alright was there anything else.

WARDEN: Just a moment. Form 20's were there.....I believe they were in a plastic bag.

What do you mean you believe.....Well I'm not sure. I believe they were.

Could you just tell us what you did when you got to the datum pegs.....I, the, Form 20's if I remember correctly were wrapped on the actual pegs by flagging tape. And I added the Form 21's to with some more flagging tape.

You wrapped the Form 21's what.....On the pegs with more flagging tape.

KAVENAGH: Where was the plastic bag.

WARDEN: What plastic, he hasn't said anything about plastic bag yet.....Sorry.

KAVENAGH: Did you observe the Form 20.....Yes.

Tagged to a peg.....Yes.

Was there anything else that you observed.....Well the Form 20 was in a plastic bag.

And where was the plastic bag.....It was up in the top part of the peg about probably three-quarters of the way up.

And you said that you attached the Form 20's to the peg, the Form 21 to the peg. How did you do that.....I used some flagging.

Where was the plastic bag at that time.....I believe I left the bag on there.

Can you recall.....Well the Form 20 was in the plastic bag and I left it there.

Left it on the peg.....Yes and I put the Form 21 just under it.

Just under it.....Yes.

Now that's in relation to both datum posts.....Yes.

And can you recall which one you went to first.....Yes I went to the north west on top one, the northern most lease close to the water tank.

Could the witness be shown exhibit one. The map. Do you recognise that document.....No. Well it looks like a Mines Department map.

I won't take that any further your Worship. Your Worship, that's the evidence of this witness.

WARDEN: Yes. Mr Johnston.

JOHNSTON: Mr McCormick you're not a Surveyor are you.....No I'm not.

Did you take the bag that you say you observed off the peg and inspect it.....No, no I didn't.

Right. So you really have no idea what was within the bag.....Well I guess not. I just assumed it to be the Form 20.

JOHNSTON: Right. What day did you say you were out there.....The 29th.

The 29th. And what time on the 29th were you out there.....It was in the afternoon.

In the afternoon. And what time did you arrive into Coolgardie on that day.....I came down to do some work because we were doing the drill program. Came down fairly early, I'm really not quite sure what time I came in. I think it was in the morning to lodge the papers.

Approximately what time do you recall at all in the morning.....Before lunch.

Before lunch.....Yes that's right.

Just before lunch.....I really couldn't be sure because I was all over that day.

So you don't know what time you lodged. You were all over that day. You don't know what time you lodged the Form 21 with the Registrar of Coolgardie.....Not exactly, no.

And you say you were out there lodging or posting the Form 21 to the pegs as you described in the afternoon.....Yes.

Was it early afternoon or late afternoon.....Late afternoon.

So am I to take it from that it was the last thing you did before departing Coolgardie.....I think it was.

Well why do you say you think it was.....I was doing some mapping and also checked some drill rigs. We have drilling, we had two rigs going at the time.

Right. You weren't involved at all in the marking out were you.....No.

Physically.....No, physical marking out no.

Putting the pegs in.....No, no.

Right. Would you accept the proposition that area is the subject of a number of mining tenements.....Well I'm very familiar with the area.

WARDEN: Well what is that, yes or no.....Oh yes, sorry.

JOHNSTON: Right and the not having checked the Form 20's you really don't know for certain the pegs that you attached the 21's to were in fact the pegs upon which the Form 20's were attached.....Yes I do because I actually walked those leases before we pegged them.

WARDEN: Pardon. You what.....I walked the leases before we pegged them.

JOHNSTON: But you didn't know where the Form 20's had been put did you.....I assumed that, you know.

You assumed that they'd been put in a particular place.....Well there was only one.

Well you assumed that they had been put in a particular place.....On the peg, yes.

And that the pegs had been located in a particular place.

WARDEN: I don't quite understand what your question is.

JOHNSTON: Well you assume that the pegs had been put in a location that you had understood that they would be put at.....Well that's mainly because I.

Well it's a yes or no answer.....Well I knew the location because we you know.

WARDEN: I don't know what he has to be answering.

JOHNSTON: You knew the location.

WARDEN: He would be right to assume that the pegs would be put in the place wouldn't he. But it's the actual site of the place that we're concerned with.

JOHNSTON: Well where did you think the pegs were.....Well.

WARDEN: When you got to these pegs did you say that you actually looked at the Form 20's or you didn't. I didn't quite hear your answer.....I didn't look, I don't recall looking at the Form 20's.

JOHNSTON: So you don't know for sure that the pegs that you attached them to were the ones that held the Form 20's.....I do know they were the rights ones because.

JOHNSTON: Well how do you know that.....Because we have an extensive survey over that whole area that we've got a grid on.

Subsequently.....No, no, no. Prior to that.

Well were the pegs in existence then.....Pardon.

Were the pegs there when you did the grid.....The peg.

Yes.....It's a corner post for one of the grounds leases.

Well was it there when you did the grid that you talk about.....We had the grid in already.

No answer the question please. When you did the grid was the peg there.....That particular peg was not there but there were other pegs there.

There were other pegs there, right. My proposition to you is that you did not know that the peg that you affixed the Form 21 to was the peg that contained the precise Form 20 of that application.....Well unless someone switched the Form 20's.

Well no you answer the question please. You did not know because you never checked the Form 20.....There was one only peg there that I knew of.

Well you told me there was a lot of marking out there. A lot of tenements, said there were other pegs there just a sentence ago. My question is that you did not know for sure that that was the peg containing the Form 20.....I assumed it was the peg because it was a brand new peg had a nice white thing on, a brand new flagging etc.

The witness can be shown the photos being Exhibit, Exhibit 1.

WARDEN: The brand new peg and what else.....Brand new, the top part of it was painted and the pegging, the actual tape was very new.

JOHNSTON: Where was the brand new peg.....In the ground.

Which tenement.....The north west corner.

JOHNSTON: The north west corner. Right was there anything else there.....There is a if I recall. There is a little Mines Department cement thing. One of those markers I think.

Anything else.....There was a. I think there is, if I remember, there's a little steel or aluminium one. It was about 2-3 feet off the.

WARDEN: A little steel what.....Aluminium peg type thing.

JOHNSTON: Now did you inspect the copper top peg when you put the Form 20 back on.....The copper top peg.

Is that was there, you were saying.....I didn't say copper top.

I'm sorry. You said there was an aluminium thing, you said there was a new peg and I thought you said there was something else a survey.....Oh there's a survey thing. Yes.

A survey.....A survey block.

Concrete brick, brass top is it.....I don't know if it had a brass top on it but it's got little markings indicating which GML's or which ML's or PL's.

Did you inspect that when you affixed the Form 21.....I probably looked at it

Well did you inspect it to see that you were on the right point.....I think I did but then again I don't know if those numbers had any relevance in that area.

I put it to you that you may have well been mistaken as to where you put the 21.....No.

Why do you say that.....Well if you had been working the ground like I had for the last year and a half. We put in over fifteen thousand metres of drill into that area and we've mapped it, we've got a border mosaic, I've got it on computer, digitally in format.

What colour was the flagging.....Orange, I think.

Orange, you think.....Yes.

: Well why do you say orange.....Because that's the main colour that sort of came to my mind.

JOHNSTON: Well, could've been red or blue or green or yellow.....No I think it was orange if I remember correctly.

And what precisely do your recall actually doing with the Form 20, 21 sorry.....I put it in plastic sample bag.

So you put it in a plastic sample bag.....And wrapped it around the pole and wrapped flagging tape around it.

Was there anything between the sample bag and the post, the wood of the peg.....No I don't think so.

Well where was the Form 20.....Above it.

Above it. Right. How do you know it was the Form 20.....I assumed it was.

You were assuming it, that's right.....Yes.

So you have no real idea just so we can clarify that point.....Well it was the only one as I said before that was a fresh peg.

So it would have been very easy for you to just pick it up and open up and make sure that's where Mr McGuire had been.....It involved unwrapped the bloody thing. I was in a bit of a hurry I think.

Right so you were in a bit of a hurry.

WARDEN: Well that would been easy, but he didn't do it.

JOHNSTON: Yes. I've no further questions, Sir. Oh sorry. I have further questions. Have a look at these photographs if you would, Sir. Can you identify those photographs.....Well not off hand. It's not enough really to show me.

So you don't recognise those photographs.....Well that's our grid peg for starters. That's the little peg you're talking about but I wouldn't say off hand because I can't see anymore than just that. I mean if you could identify that particular spot.

Well have a look at the rest of the photos.

WARDEN: Well better have a look at the time, too. This was aimed at two o'clock.

JOHNSTON: Alright Sir. Sir I ask that this witness not communicate with anybody during the adjournment.

WARDEN: Well he's not to discuss the matter with other witnesses.

JOHNSTON: Yes, yes Sir.

WARDEN: Yes. There's no other witnesses really.

KAVENAGH: No your Worship but I'll make sure that nothing untoward happens.

COURT ADJOURNED

COURT RESUMED

CONTINUING EXAMINATION OF CHARLES DAVID McCORMICK

JOHNSTON: Yes Sir continuing the cross examination of Mr McCormick if I may. Over the luncheon adjournment Mr McCormick did you go out to the site and have a look again.....No I did not.

Sure of that.....Ah ha.

Right. Just describe for me the southern datum if you would please.....Sorry the.

Southern datum.....You've lost me.

The datum of the southern tenement. 6, 3601.....The southern one. It's the north west corner.

Well you found it, you're telling me.

WARDEN: What was the question.

JOHNSTON: Just describe the southern tenements datum, 3601, describe the datum.

WARDEN: Describe what.

JOHNSTON: The datum.

WARDEN: What do you mean describe the datum.

JOHNSTON: The corner, the peg the nature of the peg.....It's the south west corner, it's close to the road.

JOHNSTON: What sort of peg was it, do you recall.....Well it's a normal sort of peg. Normal survey peg.

Normal survey peg.....Yes.

Like ones you've got there.....No I think it was bigger.

Bigger.....This isn't a, I'm not saying. Is this referring to this. Are we talking about these pictures.

Well do you think it might be.....No.

Good. No I'm just seeking to have you describe the peg that you went to, to put the Form 21 on.....All I recall is that you know that I think it was one of the bigger pegs but I'm not sure.

Bigger peg. What do you mean a bigger peg. I mean what's the standard size of pegs.....Well these pegs here are a metre, 1.2 I think and the other ones are two I think.

Two metre peg.....Right and thicker.

You said the other ones, there other pegs were there.....No I meant the other pegs.

You used plural again, the other pegs. How many pegs are there.....That particular location, I think there was just the one.

Right so the other, not the pegs, the other peg.....Yes. I think we're referring to the size.

WARDEN: Now what are we on to at the moment. What are we talking about, Mr.

JOHNSTON: The datum peg on the southern tenement 36.

WARDEN: Well why is it taking half an hour for him to tell it. What about it. It seems to be going on and on and on and on and on.

JOHNSTON: Well I want him to describe it. I want him to describe it to me and he's having some difficulty doing that. So you say it was a two metre peg.....It was a larger peg. You know I'm not quite sure of the size of it.

JOHNSTON: Do you remember the colour.....Yes, brown with a white top.

Brown with a white top.....Yes.

Alright. Any other distinguishing features in that corner....I think it had a steel post as well, and I'm not sure if it had a cement post. A cement survey post, I can't recall.

And you didn't take the Form 20 off that peg either.....No I don't recall taking it off. Whether I did or not to tell you the truth.

Well all that you were aware of was a plastic piece of paper on it.....No I don't recall whether I took it off or not.

Oh I see. Alright so you want to. Your evidence was clear before lunch that you did not take it off.....No on the first one.

On the first one.....I don't recall if I looked at the second one or not.

Don't recall if you looked at the second one.....No.

Right. Well how did you know that it was the right corner.....Well we've flown the area. We've got, we flew it back in early 92, we put on all the, we had put survey markers, large white survey markers on. So I was fairly familiar with the area.

So just your familiarity with the area assisted you in knowing that was the peg that Mr McGuire had been to.....Yes well having been around the area extensively and walked the boundaries myself previously.

Again it was an assumption.....Well I don't recall if I took off the Form 21's.

Right. When you say a brown survey peg with a white top have a look in those photos. Does it look familiar to that, similar to that.....No this peg here doesn't belong here. It's been taken off our grid. So I don't recognise that peg where it should be.

Alright so that peg there is not the peg that you affixed the Form 21 to.....Doesn't appear to be.

JOHNSTON: Alright.

KAVENAGH: Your Worship which photograph is he looking at. I've lost track here.....P15/3600. Oh it just hasn't got a date on it.

JOHNSTON: Have a look at the top. Turn the photo over. There's a mark.....P3.

P3. Sir I have no further questions for the witness.

KAVENAGH: Can I just have a look at Exhibit P3 please. If the witness could be shown P3. I just said to my learned friend something about posts there. Which posts were you referring to.....The brown one with the white top on it.

Right and if you show the photograph to his Worship and point out which one you were referring to.....It's this one here.

And to my learned friend. And that's, looking at the photograph is that the extreme left....No it's about in the centre.

Alright how many pegs are there depicted on that photograph.....There looks like there's three.

Three and which peg were you referring to.....Well.

The one on the left, the middle or the right.....The one, what referring to in what case.

Just the one that you indicated to his Worship.....That's the one there. The middle one here.

The middle.....Well not the middle. Basically it's in the middle of the photograph.

Alright with the white top. It's the only post in the photograph with the white pub, ah top.....Yes.

Thank you. No further questions your Worship.

WARDEN: Thank you Mr McCormick.

KAVENAGH: There's no further evidence to be called by the Applicant your Worship and.

WARDEN: Anybody wishes to address.

KAVENAGH: Yes I would wish.

WARDEN: Very well.

KAVENAGH: Your Worship I have prepared an outline of submission, perhaps if I could hand that up to you to assist your Worship. A lot of it may now be irrelevant.

WARDEN: Well do you wish to address on the evidence that's been given.

KAVENAGH: Yes.

WARDEN: Very well.

KAVENAGH: Together with the law as well your Worship.

WARDEN: Just make your submission.

KAVENAGH: Yes alright. Well your Worship. In this matter Copperfield Gold is the Applicant for two Prospecting Licences.

WARDEN: Yes we all know that Mr, we know what they are applying for.

KAVENAGH: Your Worship in my submission the matters that you would have to find as questions of fact are as follows. That Mr McGuire fixed firmly in the ground in the, in the, in the a north west corner of the Reserve 9435 a post as practical to the survey mark without moving or changing or otherwise interfering with the survey mark as required by Regulations 61. Also have to find that Mr McGuire fixed to that post a notice of marking out, Form 20 and we would say those two matters can be found based on the uncontradicted evidence of Mr McGuire. The other matters we say that ought to be decided as question of fact are that the application is in the prescribed form, the application is accompanied by the prescribed rent, the prescribed application fee and lodged with the Mining Registrar so all those matters are either a matter of record or from the uncontradicted evidence of Mr McGuire and Mr McCormick. Mr McCormick's evidence was also the application was made together with a map, the other non-contentious issues are that the application was advertised within fourteen days of the application which appears by exhibit four. The only contentious aspect in relation to the marking out would appear to be whether the Form 21 was affixed to the datum posts at the respective corners of the Prospecting Licences and we acknowledge

KAVENAGH: this acrued a divergence of evidence in respect of that except to say this that the evidence of McCormick is that he affixed a Form, the Form 21 which are Exhibits 2 and 3 to datum posts. And we say that although his evidence was that he couldn't recall looking at the Form 20's that he knew the area very well and he admitted in cross examination that he may have been mistaken but that he had been working in the area for a year and a half. In fact done fifteen thousand metres of drilling in the area and later on in cross examination after lunch he indicated that he has been around the area extensively. And in particular in relation to Prospecting Licence 15/3600 which is the northern Prospecting Licence the evidence was that he knew of the survey marker that was in the north west corner. And we would say it would be safe to make a finding that if he affixed the Form 21 to the datum post that was at that corner and which appears in the photographs exhibits A 1 to 4. The only evidence that casts any doubt on that is the evidence of Mr Wilks that when he and his associate who didn't give evidence appeared at those datum posts on the 1st of June 1994 that there was no Form 21 on the posts and so there was no evidence that there was no Form 21 affixed to the posts. The only evidence is that when Mr Wilks appeared on the 1st of June 1994 there was no Form 21 there. So there's on direct evidence that completely negatives or negates the evidence of Mr McCormick that he put the Form 21's on the relevant posts. Your Worship you've seen the demeanour of the witnesses and really I will leave it in of course your Worships hands to determine that question of fact and there's probably not much more I can say in relation to it. Your Worship in that outline of submissions that I have handed out, up there is also reference to the question which appeared alive yesterday when I prepared the outlines and that relates to the question whether the land is open for mining. And in relation to that I just wish to clear up one point and in that's in relation to this lease from the West Australian Mint so that there's no confusion that the lease from the West Australian Mint.

WARDEN: Well there's no confusion on that score.

KAVENAGH: Very well your Worship then those are my submissions.

WARDEN: Yes Mr Johnston.

JOHNSTON: Please you Sir. The essence of the objection comes down in my submission to two matters. Firstly whether there has been marked out in accordance with the Act and Regulations

and we say clearly that the photos and the evidence of Mr Wilks clearly indicate and he indicated to you at the datum's of the tenements which he pointed to on the map he found the Form 20 of the ground applied for by Mr McGuire. It transpires that a different person located the Form 21. Mr McCormick. Mr McCormick located the 21s on a peg which contained a piece of plastic and purported to do a number of things he says. On the one hand he says that he applied the paper and folded it within the plastic he subsequently then changed that with respect to the first tenement that is 3600 to having it in a small plastic bag. When asked to identify the photo of the datum he could not identify the photo of the datum. Notwithstanding the evidence of Mr Wilks that that is where the datum was and where he located the Form 20. There is no evidence that the Form 21 was affixed to the peg containing the Form 20. And in my submission it's clear, and should be clear to you Sir that Mr McGuire, sorry Mr McCormick, obviously did something but it was not to affix the Form 21 to the peg containing the Form 20. He says that with respect 3601 the southern portion of the reserve which was sought in this application there was a bigger higher brown with a white top peg, a steel post and he's not sure about a concrete survey peg. Well I simply ask that you refer to the photos and see if that accords with what Mr McCormicks evidence was as to where he put the Form 21. He also says that on the one hand there were a number of pegs in the area but he would have you believe that there were no pegs where he located the Form 21. And finally I feel the essential evidence is that when shown the photograph put in by Mr Wilks he says that that is not the peg that he affixed the, Form 21 to and yet Mr Wilks says that is the corner of the reserve which is the datum, the Form 20 is there he took a photograph of it, there in the photograph we are to see and it's clear that on the face of it, if there's any doubt then Mr Wilks evidence should be afforded the positive aspects of that doubt and clearly the evidence of McCormick should be viewed under the umbrella of the fact that he didn't take the time to ensure that the piece of plastic that was on the peg was in fact Mr McGuire's Form 20. That's the submissions that I would wish to make in respect to that. I would also say to you that this tenement as a matter of law in my submission and I know the law is your province. I simply make a comment it would appear that given the excision that your Worship has averted to quite correctly that only the top thirty metres is available for the grant of this tenement in light of provisions of Section 117 of the Act. I would draw your Worships attention to the case of, I do have a copy Mr Justice

Wallace's decision, I'm sure my friends probably got a copy of it, he's aware of it too, I'm sure. It's the case of Mullavey, Mullavey T P, Sir. Wherein page three his Honour talked of and he was here dealing with tailing leases on the surface which Mr Mullavey sought to apply for over a mining lease but his Honour said in the middle of page three "Furthermore there is nothing in the 1978 Act to authorise the granting of Mining Leases over different strata of land". I would simply say to you that on any reading of the Act the granting of a strata is not foreshadowed is not envisaged and would say that his Honour was correct there in that a strata of land to the depth of thirty metres is not a mining tenement which is capable of being granted. Now his Honour is talking about Mining Leases it may be that you make a distinction Sir between a Prospecting Licence or licences that are before you now and a mining lease but given that a P evolves to a M if its carried through to its logical extent then we would say that on the basis of his Honours perspective of the law with respect to the Act this is not an application which in terms complies with the Act. Those are the Objectors submissions.

WARDEN: Thank you. Now having heard the evidence I'm satisfied the ground the subject of the two claims of this Copperfield Gold NL were marked out in accordance with the Act and the Regulations. I'm satisfied that both Forms 20 and 21 were affixed to the relevant datum posts by McGuire and McCormick respectively. Certainly the Objector's witness Mr Wilks didn't see them on the peg and that was because they weren't there but that doesn't necessarily establish that they weren't placed on the peg. I'm satisfied that the, that McCormick adequately identified the datum posts, I'm satisfied that the posts he identified were the correct datum posts. Perhaps if he referred to that concrete survey peg or marker or whatever it was on the north west corner, north east corner or this other side that they were marked out correctly what happened to the Form 21 who knows. I suppose they've gone missing before today. I'm satisfied incidentally too that the land marked out by the Copperfield Gold, the Applicant was available for the applications which have been made. Accordingly I've dismissed the objections the, will be, the applications will be forwarded to the Minister for his appropriate action. He has to give his consent or do something or rather before the applications can be granted.

KAVENAGH: Your Worship one further matter and that's in relation to the costs of these matters.

WARDEN: Yes.

KAVENAGH: Normally in these matters costs are not awarded and but under Section 134(2) costs can be awarded if the Warden is satisfied that the application or objection so made was frivolous or vexatious. We say in respect to this matter two thirds of the objection was frivolous or vexatious in that the objections itemised in two and three of the objection could not possible succeed as a matter of law and hence are frivolous. And we would seek that an order be made that perhaps not all the costs of this application be borne by the Objector but a portion of the costs in relation to the getting up of the matter in relation to two items that appear on the objections.

WARDEN: Yes. Mr Johnston.

JOHNSTON: Well Sir we would, as you heard the Minister is to afix conditions and as you can see.

WARDEN: We're not talking about conditions, we're talking about the costs of this action.

JOHNSTON: No we're talking about costs. I would say to you that it would be difficult to maintain before the Minister that certain conditions should be affixed which would in an orderly way protect the interest of the underlying tenement holder.

WARDEN: Well what tenement holder, there was no tenement holder, the land had been excised from every tenement.

JOHNSTON: Well the top thirty metres had been excised Sir.

WARDEN: Oh I see.

JOHNSTON: So that below 30 metres, I'm sorry Sir.

WARDEN: How can the Objector possibly maintain his objection.

JOHNSTON: Well the Objector produced evidence that there was no Form 21's on the posts on the 6th of February which was approximately one month after the marking out.

WARDEN: Well his objection is very officious isn't it.

JOHNSTON: Well no, his objection was one where it was clear to him that having found the Form 20's.

WARDEN: The Objector, that's to say, Coolgardie Gold, had this land, its been excised since 1980 what when the a, when the a, when the a GML's were combined into this mineral lease.

JOHNSTON: 1985.

WARDEN: 1985 why haven't they done something since then.

JOHNSTON: Well they haven't done anything because they believe the Minister having excised it from them would not have given it to somebody else.

WARDEN: Well it's up to the Minister to do whatever he likes with it. Why didn't they try to have something done about it.

JOHNSTON: Well they thought the Minister would act with fairness and not allow some other party to mark out and apply for the mineral rights contained within the top thirty metres which I would say to you is not unreasonable.

WARDEN: So it's dead ground then. The Minister hasn't given his approval for anything yet.

JOHNSTON: Well that's correct but in terms of approaching the Minister with respect to these applications, your Worship would be aware that it is appropriate to object, the ground at one time having been held by Coolgardie Gold and then having been as you quite rightly point out excised but, I would also say to you that is one consideration. The second consideration is that the marking out when viewed was seen to be inadequate and photographs were taken and upon coming across that sort of evidence one is perfectly entitled and it would be reasonable to seek to object and indeed that has happened. The fact is the objection was a reasonable one notwithstanding your finding. The substance of what is frivolous and what is vexatious would have been met had there been no evidence. All I say to you is that the lack of discovery of a Form 21 put the Applicant to prove that he actually put it there. He has satisfied you of that, but prior to that satisfaction it was clear there was not a Form 21 on the post and in no circumstances the application Sir in my respectful submission is not frivolous or vexatious.

WARDEN: Thank you Mr Johnston. Well the objections have no basis and I, my order would be that the Objector is to pay the applicants costs to be taxed at the highest scale of the Local Court scale of costs.

COURT CLOSE