

Letters to the editor

EXTRALATERAL RIGHTS AND THE DERBYSHIRE CUSTOMS

Lynn Willies

In the last Bulletin, arising from his contribution to the Mining Law History Conference, Don Sherwood (1988) put forward an eloquent case for extralateral rights being an invention of the Californian Miner to deal with the particular geological conditions there. This is in contrast to the accepted viewpoint put forward by most writers, eg. by the Hoovers (1912), who suggested the origin of the law in the laws of Germany, Spanish America, or, particularly, Derbyshire. His case appears to rest on two main planks: first that geological conditions in Derbyshire did not require an extralateral law or custom, and second that there is no mention of such law by several key writers (Kirkham 1969; Ford and Rieuwerts 1983), so that it does not exist. I shall argue that both propositions would have been unacceptable to contemporary lead miners, and that in fact extralateral rights are axiomatic within the Derbyshire customs.

An extralateral right occurs where, because a vein is inclined, or hades, rather than is vertical, the miner is permitted to follow it down in depth, to a point outside the vertical limits of the surface boundary. In some cases this may mean, where two veins are in separate ownership, that workings in one mine may be vertically over those of another. The area being worked outside the bounds of surface ownership or rights being done so under the extralateral right. In Lindley's words, cited by Sherwood, "the vein is the thing". In areas without extralateral rights, eg. the setts of Cornwall, then mining is only permitted as far as the vertical boundary.

It is accepted that in the American West, veins are very frequently highly inclined, as emphasised by surviving late 19th, or early 20th century headstocks, and also that in Derbyshire, this is a very much less pronounced characteristic, with many veins or rakes being close to vertical. In this connection the terms rake and vein can be taken to be virtually synonymous; to quote Hooson (1747), a Derbyshire Miner, who in his Dictionary got closer to the reality of Derbyshire lead mining than any other writer:-

"Rake. This is a word used commonly for veins.... One shall never hear miners say they have found a new Rake.... but after (mining) then to call it a rake seems fit enough; it is applied to any old exhausted work".

We need to be aware that the "old man" generally divided work into either pipes or veins - modern geological usage of rakes, pipes, scrins and flats is useful, but far more precise than in its original usage. We can see this easily in such mines as Coalpitrake (Devonshire Cavern) at Matlock Bath, which in its easily accessible portion is made up of parallel scrins under an unfaulted wayboard and limestone roof - quite unlike the usual modern conception of a rake.

That Derbyshire veins or rakes are often inclined is a matter of observation, now and in the past. Hooson (1747) has this to say:-

"Hadeing (sic). There are not many veins that will sink down with its sides perpendicular to any great depth".

and

"Heap. This is a term well known in mining.... when the vein is thrown of (sic) its perpendicular course.... (as) much aside as a yard, two or three, or more".

and

"Minery. but if it lies Deep, and remote, hard and much Hading...."

In Cromford Liberty, there is a vein known as Hading Vein (or rake), and on Longstone Edge, veins were known either as plumbs or hadings. Many surface exposures show the veins to be at least slightly inclined rather than vertical, as for instance at Oden Rake at Castleton. Part of Great Rake, just east of the Tower on Abraham's Heights at Matlock Bath is inclined at about 30 degrees, and Key Vein in Longtor Mine nearby also has a pronounced hade. Indeed hading of the veins on the Matlock Bath hillsides seems normal, as in the parallel scrins between Bacon Rake and Coalpitrake. The phenomenon of hading is also responsible for the curve of many veins as they cross undulating ground (see Flindall 1976 p27, for example, or the six inch Geological Survey Map SK25NE): the curve of Great Rake as it crosses the Matlock Gorge is especially easily seen from High Tor. It is also reflected in a number of mine plans - in which successive levels appear displaced as a

result of the hade, and to an uninformed observer might appear to be different veins, eg. at Magpie Mine.

Even a relatively small hade (defined as the inclination from the vertical), can have a significant effect. Thus a hade of only 16 degrees will laterally displace workings some 25 feet in 100 feet. On such a vein, the miner will, at a depth of 100 feet, be working outside his surface possession, the quarter cord, of seven yards either side of the cheeks of the vein. In the scrins at Matlock Bath referred to above, which range between about 60-100 feet deep, it is likely they are so closely spaced that at the very least miners were working below the quarter cord of adjacent mines. And at the Hading Vein at Cromford, the dispute of 1787-88 resulted from just that: Miners of Ash Cross Vein were found to be working Hading Vein, with the Hading Vein Mine stows at outcrop, and Ash Cross stows some considerable distance away, but over the Hading Vein at depth (Willies 1988 p150; Wolley 6676 ff214-34, and 6681 ff465-70). Here, as so often in Derbyshire mining legal disputes, the jury were given the usual charge, "to give opinion as to whether it is all one vein". In all such disputes, the question was not where the vein was, but was it the same that had been freed, and then, was it the first freeing? Thus, though the term "extralateral right" was not used in Derbyshire, the concept was.

Why, therefore, apart from a brief mention by myself (Willies 1988 p150) has it not been considered by Derbyshire writers? Possibly because to miners in the past the vein was indeed the thing, and his possession was in it "and the finder or first discoverer of the vein is entitled to have assigned to him two meers of ground in it (Bainbridge 1900 p150). The object of the miner is to extract mineral. He was only interested in general terms with the vein itself, and sufficient space for his waste heap and coes. Except where veins joined in depth or longitudinally, this was a simple concept which worked, and which in case of dispute, was settled by a jury of miners themselves. By the 19th century the concept was being modified - the previous century had seen too many disputes, and at Magpie for example, title was taken by adjacent proprietors to all veins within compact blocks equivalent to the Cornish setts: the disputes there concerned a rich vein or veins which unfortunately ran along the boundary of two blocks, allowing the Magpie lawyer, William Brittlebank, considerable scope (Willies et al 1980 p13). As has perhaps been indicated by John Lacy in his "The Least Welcome Profession: Lawyers in the Mining Camps", the interest of the lawyer was more in disputes than production, and the development and exploitation of legalistic concepts such as extralateral rights replaced a previously implicit or axiomatic acceptance. We mining historians in our age are perhaps more remiss - the concept is an important one, quite at variance with most other aspects of the law, and we should be grateful to Sherwood for bringing it to our notice. We might in the same way be remiss in our over-precision in usage of vein terminology, translating, uncritically, modern concepts into our interpretation of the past. An investigation into the extent and distribution of hading is perhaps also overdue.

Don Sherwood, in developing his argument, and with others in the discussions which followed, touched upon a wider issue; to what extent were ideas developed independently by miners in new fields, to meet the needs of the moment, and to what extent did they adopt them by diffusion. Gill for Grassington (1988), like Sherwood for California, went to some pains to convince us that their laws were independently derived. It is a difficult concept to swallow whole. In the case of California, it is to my mind incontrovertible, that the example of "extralateral rights" was available in the world, if (implausibly) not in Derbyshire, then in Germany, if not there, then in Spanish America, though the term itself is doubtless a lawyer's invention. In 1849 and after tens of thousands flocked to California, many of whom must have had some experience of mining, and who must have discussed little but mining. They had a huge interest in legally asserting their ownership and rights (Dempsey 1988), and it is difficult to believe there was not one involved in the making of those simple laws, with their striking similarities in principle with those of older mining areas, who had heard of the right to follow the vein down. As for Grassington, in a like way, is it not likely the concepts were known, considered, and adapted, possibly with considerable ingenuity, to meet the precise needs of local circumstances?

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EXTRALATERAL RIGHTS AND THE DERBYSHIRE CUSTOMS - A REPLY

Don H. Sherwood

First keep in mind my presentation at Matlock Bath was intended to elicit information which I did not have. That is I knew that nothing appeared in the english literature to which I had access giving any indication what ever that extralateral rights, as that term is understood here, existed in Derbyshire. Indeed a close examination of the Derbyshire references cited by Lindley and others for the proposition that the concept had its antecedents in Derbyshire seemed at best inconclusive, and at worst inapposite. So what I wrote in finalising my paper was based upon what I thought I learned while I was in Derbyshire. Lynn Willies' letter is the first indication that I have had that there may be learning to the contrary.

Second, please be assured that I am absolutely delighted to receive Lynn's thoughtful and informative letter. The information set therein will receive my careful attention, at least in the next article on the subject which I am writing for presentation in July, and publication late this year, or very early next year. As all who know me will attest, I love controversy, and generally wish to see more rather than less.

Third, I did not mean to suggest that the extralateral right was an invention of the Californian miner. To the contrary, I mean to suggest that miners anywhere, if free to make rules for their own governance, will create extralateral rights when the geological facts are as they found them to be on the Mother Lode in California. My argument is that only where miners are otherwise constrained by the existing regime or authority -- as the existence of the Boer regime in the Transvaal prevented the creation there of extralateral rights -- will the extralateral right not appear. It is also my supposition that in Europe feudal ownership concepts tended to prevent the development of true extralateral rights. That is, where real need was absent for the extralateral right, as in Saxony, it seems to me unlikely that feudal lords would have tolerated extralateral rights, and this would most likely be so where most veins are vertical. Having been informed that in Derbyshire most veins were vertical, and seeing nothing there to the contrary, I concluded the absence of references to anything even approximating to the extralateral right in the literature available to me suggested that the law there responded to the facts, rather, of course, than the other way round. And my point is that that is the way the law naturally tends to develop.

Finally, I was asked two further points by Lynn Willies, in another letter, not that to the editor. He considered that his argument could still fall flat, if the United States rights went further than those in Derbyshire. I am not at all sure that it does, even though the answers are both in the negative. The first question, as to whether the extralateral right in California allowed the "driving of a drainage tunnel or sinking a shaft off the vein, outside the area of the surface title, to the vein", our extra-lateral right there most certainly does not permit the driving of a cross cut through country rock to the vein from a shaft sunk off the vein, nor does it permit an adit driven from the surface through country rock to the vein. An adit would have to be driven in or along the

vein.* As to the second question, whether the right in California "allowed dumping of waste in areas outside the surface title, or erection of buildings etc., above the vein, but outside the surface title, would most certainly not be permitted under the extralateral rights of the United States. True either of these things can be done if the surface title is owned by the Federal Government, and otherwise unclaimed and unoccupied, or otherwise acquired from the proprietor (the Federal Government), the private owner of the adverse surface title could prevent either of the postulated activities. Indeed, one of the rules most commonly applied in the United States is that one must exercise his extralateral rights solely by mining downward within the confines of the vein or lode, even if the vein unquestionably belongs to the tunneler.

So the right in the western part of America must be quite different from the right described in Derbyshire. But I do not necessarily draw from that conclusion that I am right and Lynn Willies is wrong. What I have seen is that the system in Derbyshire provided for conflict along the strike of veins, on dumping ground on the surface, and for distinguishing one vein or veins from another, especially where the vein splits or is divided, as by a horst of some sort. But manifestly the vein is the main thing, and I do not doubt that a miner, fettered only by his peers, would have enjoyed in Derbyshire the extralateral right if the geology called for it. What I have not seen is the evidence for it. And if a vein there must be freed again, as I am told, when it enters the land of a different lord on strike, and was freed again when it did so on the dip, as I understand to have occurred in one case, then I do question whether the extralateral right was so well understood as to be deemed established in Derbyshire, not so much because it was prohibited, but because the need for it seldom, if ever, arose.

Again I do not think the result in California independently derived, in the sense that the concept was wholly unknown to all who came to the Mother Lode. I think those adventurers responded to the geology, and that the extralateral right is like "natural Law", that is, obvious; it is neither contrived, nor artificial. Furthermore, I certainly agree that the term "extralateral right" was a latecomer to the scene. In fact the first known use of the term was not by a lawyer, but by an engineer, and quite a famous one at that. Dr Rossiter W. Raymond, who coined the term in 1884 in an article in Volume XII, at page 387, of the Transactions of the American Institute of Mining Engineers, called "The Law of the Apex". But that is not to say that the term was devised by one whose mind never tended toward legal thought. Late in life, Dr. Raymond became a lawyer, and he died a lawyer; there is something noteworthy in that, but I have not been able to put it in words.

*Note: (L. Willies) this appears somewhat stricter than the actual practice in Derbyshire - though miners were quite capable of pretending to a vein in a convenient position, and in other cases there may have ignorance about the extent of miners' rights. The limitations of this right were set out in a case concerning Millclose Sough, implying perhaps an excessive claim previously. See Wolley MSS. 6677, ff71-72, 100, 120.