



In the Privy Council.

No. 9 of 1896.

ON APPEAL

FROM THE SUPREME COURT OF BRITISH COLUMBIA.

A BETWEEN—THE ESQUIMALT AND NANAIMO RAILWAY COMPANY - - - - - APPELLANTS,

AND

WILLIAM HERBERT BAINBRIDGE - - RESPONDENT.

Case for the Respondent

B WILLIAM HERBERT BAINBRIDGE.

1. This is an Appeal from a Judgment or Order of the Full Court Record, p. 18. of the Supreme Court of British Columbia, dated the 7th of August, 1895, dismissing with Costs an Appeal from a Judgment of the Honourable Mr. Justice Drake, one of the Judges of the said Supreme Court, dated Record, p. 10. the 17th of October, 1894, whereby in an action brought by the Respondent against the Appellants, the Appellants, their servants and agents, were restrained from interfering with the Respondent's right to work and mine a certain Placer Claim known as the "Blue Ruin," Placer Claim, and it was adjudged that the Respondent was entitled to enter on and mine the lands of the Appellants upon having complied with the conditions contained in sec. 11 of the Placer Mining Act of 1891 and that the Respondent should recover from the Appellants his costs of action to be taxed.

Record, p. 1.

2. The action was commenced on the 27th of July, 1894, and was brought to recover damages for wrongful ejection and for an injunction restraining the Appellants as aforesaid. On the 2nd of October, 1894, it came before the Honourable Mr. Justice Drake, on Motion for an Injunction which was by consent turned into a Motion for Judgment. A

Record, p. 9.

3. The facts and documents upon which the said Judgments were founded are contained in the Affidavits of the Respondent and of James Dunsmuir, the Vice-President of the Appellant Company, and the exhibits annexed thereto.

Record, pp. 2-8.

The facts are shortly as follows:— B

4. By an Act 47 Vict., c. 14, of the Legislature of British Columbia aforesaid, intituled "An Act relating to the Island Railway, the Graving Dock and railway lands of the Province," there was granted to the Dominion Government for the purposes of constructing and to aid in the construction of a railway between Esquimalt and Nanaimo, certain land in Vancouver Island therein specified, and including all coal, coal-oil, ores, stones, clay, marble, slate, mines, minerals and substances whatsoever thereupon, therein and thereunder. C

5. By letters patent under the Great Seal of Canada dated the 21st day of April, 1887, Her Majesty Queen Victoria under and by virtue of the said Act of the Legislature of British Columbia and of an Act of the Parliament of Canada 47 Vict., c. 6, and of every power her in that behalf enabling, and by and with the advice of her Privy Council for Canada granted to the Appellants, their successors and assigns the said land in Vancouver Island in aid of the construction of the said line of Railway in so far as such lands were vested in her and held by her for the purposes of the said Railway, or to aid in the construction of the same, and also all coal, coal-oil, ores, stones, clay, marble, slate, mines, minerals and substances whatsoever in, on, or under such lands and certain foreshore rights in so far as such coal, coal-oil, ores, stones, clay, marble, slate, mines, minerals D E F

and substances and foreshore rights were vested in her as represented by the Government of Canada.

6. On the 21st June, 1894, the Respondent then being a duly licensed free miner mining at China Creek in the District of Alberni, located pursuant to the provisions of the Placer Mining Act, 1891 (54 Vict., c. 26), on the said China Creek, the Placer Claim mentioned in the 1st paragraph hereof. The said claim is situated within lands held by the Appellants under the letters patent hereinbefore mentioned. The Respondent having duly complied with the requirements of the said Placer Mining Act, on the 23rd of June, 1894 began to work the said claim, and was thereupon ejected therefrom by one Charles Green, the agent of the Appellants, upon the alleged ground that the gold and silver and precious metals on the said claim belonged to the Appellants.

7. Upon hearing the motion in the 2nd paragraph hereof mentioned, the Honorable Mr. Justice Drake gave Judgment for the Respondent as mentioned in the 1st paragraph hereof, and held that the said letters patent had no reference to, and did not pass to the Appellants any interest in precious metals lying within or under the said lands, and further that the Respondent was entitled to enter upon the said lands to search for the precious metals. The reasons for the said Judgment will be found in the Record. Record, p. 9.

8. The Appellants having on the 20th of February, 1895, appealed to the Full Court against the said Judgment of Mr. Justice Drake, the Full Court after hearing argument on the 10th of May, 1895, gave Judgment on the 7th of August, 1895, affirming the said Judgment of Mr. Justice Drake and dismissing the Appeal with costs. The reasons for the Judgment of the Full Court will be found in the Record. Record, pp. 12-18.

9. On the 9th of December, 1895, the Appellants obtained from the Full Court final leave to Appeal to Her Majesty in Council from the said Judgment or Order of the Full Court, and the Appellants thereupon brought this Appeal. Record, p. 22.

10. The Respondent submits that the Judgment or Order of the full Court should be affirmed, and that this Appeal should be dismissed with costs for, among other, the following

REASONS :

1. That under and by virtue of The Placer Mining Act, 1891, A (54 Vict., c. 26) and the British Columbia Land Act, 1884, 47 Vict., c. 16 (Consolidated Acts 1888, c. 66), or one of them, the Respondent was entitled to enter upon the lands above-mentioned and to search for and get the gold, silver and precious metals, within upon B and under the said lands.
2. That the gold, silver and precious metals within, upon or under the said lands, were not granted to the Appellants by the letters patent above-mentioned, and were not vested in them at the time when the Respondent entered C upon the said lands.
3. That the Judgment appealed against was founded upon a correct view of the facts and of the law applicable thereto.

JOHN C. BIGHAM.
CHARLES A. RUSSELL.

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CASE FOR RESPONDENT.

GARD, HALL & ROOK,

2 GRESHAM BUILDINGS,

BASINGHALL STREET, E.C.,

Solicitors for the Respondent