

*Judgment of the Lords of the Judicial Committee  
of the Privy Council, on the Appeal of the  
Esquimalt and Nanaimo Railway Company  
v. William Herbert Bainbridge, from the  
Supreme Court of British Columbia ; delivered  
28th July 1896.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The Respondent in this Appeal is the holder of a free miner's certificate under the "British Columbia Placer Mining Act 1891," (54 Vict. cap. 26), authorising him to work the "Blue Ruin" claim, 100 by 100 feet, which is situate within lands in Vancouver Island belonging to the Appellant Company. The Act of 1891, by Section 10, gives the holder of such a certificate the right to mine for gold and other precious metals "upon any lands in the Province of British Columbia, whether vested in the Crown or otherwise, except upon Government reservations for town sites, land occupied by any building and any land falling within the curtilage of any dwelling-house, and any orchard and any land lawfully occupied for placer mining purposes, and also Indian reservations." By Section 11, the free miner is bound to give adequate security to the satisfaction of the Gold Commissioner for any loss or damage which may be caused by his entry, and to make full

compensation to the occupant or owner of the lands, for any loss or damage which may be caused by reason of his entry; such compensation, in case of dispute, to be determined by a Court having jurisdiction in mining disputes, with or without a jury.

The Appellant Company ejected the Respondent from the land specified in his certificate, which he had entered upon for the purpose of gold mining; whereupon, he brought the present suit against them, before the Supreme Court of British Columbia, in which he concludes (1) for damages, and (2) for an injunction restraining them from interfering with his working, for gold and other precious metals, the "Blue Ruin" claim, as described in his certificate. The defence to the action is disclosed in an affidavit filed by James Dunsmuir, the President of the Appellant Company. Omitting details, the substance of the allegations made in defence is, that the Company were, before the issue of the Respondent's certificate, fully vested with the whole right and interest of the Crown, to and in the mines of gold and other precious metals within the whole lands belonging to them in Vancouver Island, including the land embraced in the Respondent's "Blue Ruin" claim.

Accordingly, the main, if not the only question arising for decision is:—Whether the Appellant Company have right to the mines of gold and other precious metals which may exist within their lands. Mr. Justice Drake, before whom the case was tried, has found that they have not; and has ordered and adjudged that the Respondent is entitled to enter upon and mine the lands belonging to them, upon complying with the conditions contained in Section 11 of the Placer Mining Act of 1891. On appeal, his judgment has been unanimously affirmed by the Full Court, consisting of Justices Crease, McCreight and Walkem. The Respondent does not maintain

that his free miner's certificate would give him any right to enter and work, if it were held that the gold and other precious metals in the lands of the Appellant Company are their property.

The circumstances under which the title of the Appellant Company to gold and other precious metals is asserted, are as follows. By Order of Her Majesty in Council, dated the 16th day of May 1871, the Province of British Columbia was admitted into the federal union of Canada, in terms of Section 146 of the British North America Act 1867, subject to articles of union which had previously been agreed to by the Governments of the Dominion and the Province, and sanctioned by their respective legislatures. These articles included an undertaking by the Dominion to construct a line connecting the Canadian Pacific Railway with the sea-board of Vancouver's Island; in consideration of which, the Government of British Columbia became bound to grant to the Dominion, (1) a belt of land twenty miles in width, on either side of the new railway, across the mainland of the Province, and (2) a large area of land in Vancouver Island, described by boundaries which it is unnecessary, for the purposes of this appeal, to refer to.

The railway has been made, in terms of the undertaking given by the Dominion Government, who delegated its construction to the Appellant Company. The relative obligations of the Government of British Columbia were sanctioned, and given effect to, by the British Columbia Act, 47 Vict. cap. 14. Section 2 of that Act granted, to the Dominion Government, the public lands along the line of railway, to a width of twenty miles on each side of the line. Section 3 granted, to the Dominion Government, the area of land in Vancouver's Island, already mentioned, "in-

“ marble, slate, mines, minerals, and substances  
“ whatsoever thereupon, therein, and thereunder.”

On the 20th day of August 1883, an agreement was made between the promoters of the Appellant Company and the Government of the Dominion, to the effect that the Company, when formed, should construct the line, now known as the Esquimalt and Nanaimo Railway. After the incorporation of the Company the agreement was sanctioned by the Dominion Act 47 Vict. cap. 6, which also authorised the Governor in Council to grant to the Company all the lands situated in Vancouver Island which had been granted to Her Majesty for behoof of the Dominion, by the Legislature of British Columbia, in aid of the construction of the railway, “and also all coal, “ coal oil, ores, stones, clay, marble, slate, mines, “ minerals, and substances whatsoever in, on, “ or under the lands so to be granted to the said “ Company.” In pursuance of that statutory authority, the Dominion Government, by deed under the great seal of Canada, dated the 21st day of April 1884, granted and assigned to the Appellant Company, *inter alia*, all the lands and minerals in Vancouver Island which had been granted to that Government by Section 3 of the British Columbia Act 47 Victoria cap. 14. The extent of the Appellant Company’s interest in these lands and minerals must therefore be determined by reference to the terms of that clause.

In *Attorney-General of British Columbia v. Attorney-General of Canada* (14 Ap. Ca. 295), it was held by this Board that Section 2 of the British Columbian Act, which relates to the lands comprised in the forty-mile belt, did not give the Dominion Government any right to gold and other precious metals in those lands, which were held by the Crown under its prerogative title. The second section, which alone was considered in that case, makes no mention of,

and does not profess to grant any subject, other than "public lands." The Appellant Company, whilst admitting that apt and precise language is necessary in order to alienate the prerogative rights of the Crown, rely upon the enumeration of minerals which is coupled with the grant of lands in Section 3, as sufficient to show the intention of the Provincial Legislature to transfer to the Dominion Government their right to administer the precious metals in these lands.

The words relied on are, "including all coal, coal oil, ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever thereupon, therein, and thereunder." The only expressions occurring in that enumeration, which can possibly aid the argument of the Appellant Company, are "mines, minerals, and substances." Not one of these expressions can be rightly described as precise, or, in other words, as necessarily including the precious metals. According to the usual rule observed in the construction of the concluding and general items of a detailed enumeration, they may be held to signify *alia similia* with the minerals or substances previously enumerated; and it appears to their Lordships to be sufficient for the decision of the present case, that they may be aptly limited to minerals or substances which are incidents of the land, and pass with the freehold.

Being of the same opinion with the learned Judges in both Courts below, in whose reasoning they concur, their Lordships will humbly advise Her Majesty to affirm the judgment appealed from. The Respondent's costs of this appeal must be paid by the Appellant Company.

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