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UNIVERSITY OF LONDON
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No. 9 of 1896
INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

On Appeal from the Supreme Court of British Columbia.

BETWEEN

THE ESQUIMALT AND NANAIMO
RAILWAY COMPANY - - - *Appellants*

AND

WILLIAM HERBERT BAINBRIDGE *Respondent.*

CASE FOR THE APPELLANTS.

1. This is an Appeal from the Judgment of the Supreme Court of British Columbia, affirming the Judgment of Drake, J., in favour of the Respondent (Plaintiff), on a motion by him for an injunction to restrain the Appellants (Defendants) from ejecting the Plaintiff from or interfering with his right to work and mine a certain placer claim. The motion was by consent turned into a motion for judgment.

2. The question at issue in the action was the right of the Appellants to the mines of precious metal within the belt of land granted to them by the Crown, as represented by the Dominion of Canada, for the purpose of constructing and to aid in the construction of their railway.

3. By the Statute of British Columbia, 47 Vic. c. 14, after reciting an Agreement between the Governments of Canada and British Columbia, and in pursuance of such Agreement there was by Section 3 granted to the Dominion Government for the purpose of constructing and to aid in the construction of a railway between Esquimalt and Nanaimo, certain lands therein described (which comprised the site of the Respondent's placer claim) and including all coal, coal-oil, ores, stones, clay, marble, slate, mines, minerals, and substances whatsoever, thereupon, therein and thereunder.

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4. By subsequent sections of the same Statute the Appellant Company was incorporated and empowered to construct their railway.

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5. By the Statute of Canada, 47 Vic. cap. 6, after reciting the same Agreement, it was by Section 3 provided that the Governor in Council might grant to the Appellant Company (*inter alia*) all of the land situated on Vancouver Island which had been granted to Her Majesty by the last mentioned Act in so far as such land should be vested in Her Majesty 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 or under the lands so to be granted to the Company as aforesaid, and the foreshore rights in respect of all such lands as aforesaid with the privilege of mining under the foreshore and sea opposite any such land and of mining and keeping for their own use all coal and minerals in the said section mentioned under the foreshore or sea opposite any such lands in so far as such coal, coal-oil, ores, stones, clay, marble, slate, mines, minerals and substances whatsoever and foreshore rights are vested in Her Majesty as represented by the Dominion Government. 10

Record p. 5.

6. By Letters Patent under the Great Seal of Canada, dated 21st April, 1887, Her Majesty, after reciting the said Statutes granted, assigned, and conveyed to the Appellant Company all the lands granted to the Dominion Government by the said Act of the Province of British Columbia. 20

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7. "The Gold Mining Ordinance, 1867," of British Columbia (Consolidated Acts, 1877, c. 123) enacts, Section 1, that in the construction of the Ordinance the word "mine" shall mean any locality in which any vein, stratum, or natural bed of auriferous earth or rock shall be mined.

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8. "An Act relating to Minerals other than Coal" (Consolidated Acts, 1877, c. 126) reciting that the Mineral Ordinance, 1869, is not calculated to develop the mineral resources of the Province, enacts, Section 1, that the word "minerals" in that Act shall be construed to mean and include all minerals (other than coal) found in veins or lodes, and whether separately or in combination one with the other. 30

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9. "The Mineral Act" (1884, c. 10) (Consolidated Acts, 1888, c. 82) enacts that in the construction of that Act "mine" shall mean any land in which any vein, stratum, or natural bed of earth or rock shall be mined for gold or other minerals, except coal, and "mineral" shall include all minerals, precious or base (other than coal), found in veins or lodes or rock in place, and whether such minerals are found separately or in combination with each other.

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p. 28.

10. "The Land Act, 1875" (Consolidated Acts, 1877, c. 98), enacts, Section 80, that nothing therein contained shall exclude free miners from entering upon any land in that province and searching for and working minerals. 40

11. "The Land Act, 1884" (Consolidated Acts, 1888, c. 66), enacts, Appendix
p. 29.
Section 95, that nothing therein contained shall exclude free miners from entering upon any land in that province and searching for and working minerals.
12. The Respondent, a free miner, and having taken out a license, Affidavit of
Respondent.
Record p. 2.
recorded on 23rd June, 1894, a placer claim on China Creek, which is the placer claim in question in this action. He received a certificate in respect of such claim and, having paid the usual fees, began forthwith to work the said claim. He was shortly afterwards ejected therefrom by the servants of the Exhibit A.
Record p. 3.
10 Appellants acting on their behalf and by their direction and authority.
13. The Writ of Summons in this action was thereupon issued on Record p. 1.
27th July, 1894, and on Motion for Injunction on behalf of Respondent Plaintiff (which was by consent turned into a Motion for Judgment), Drake, J., on 2nd October, 1894, gave judgment for the Respondent with costs. Record pp. 10
& 11.
14. The Appellants by Notice, dated 20th February, 1895, appealed Record p. 11.
against that judgment to the Full Court, and the Appeal having been heard by the Full Court, consisting of Crease, McCreight, and Walkem, J.J., was on Record p. 18.
7th August, 1895, dismissed with costs.
15. Leave was duly given to the Appellants to appeal against this Record p. 20.
20 judgment to Her Majesty in Council, and the Appeal was subsequently duly Record p. 22.
admitted.
16. The Appellants submit that the judgments of Drake, J., and of the Full Court are erroneous and ought to be reversed for the following, among other

REASONS.

1. Because the gold, silver, and precious metals in and under the land in question were granted to the Appellants by the said Letters Patent of the 21st of April, 1887, for valuable considerations, and thereby became and since have been absolutely vested in the Appellants.
 2. Because the said Letters Patent contained apt and precise words to sever from the title of the Crown and to vest in the Appellants the mines of gold, silver and precious metals in and under the said land.
 3. Because the Respondent was not entitled to enter upon the said land for the purpose of locating or working a placer claim.
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4. Because placer claims on the said land could not be lawfully located or recorded without the consent of the Appellants.
5. Because the word "lands" in "The Placer Mining Act, 1891," Section 10, does not include lands in which the mines and minerals have been previously granted away by Her Majesty.
6. Because the reasons given by Drake, J., and by the Judges of the Full Court do not sustain the judgments pronounced in favour of the Respondent.

HERBERT H. COZENS-HARDY. 10

W. H. CLAY.

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THE ESQUIMALT AND NANAIMO
RAILWAY COMPANY . *Appellants*

AND

WILLIAM HERBERT BAINBRIDGE
Respondent.

APPELLANTS' CASE.

HEPBURN, SON & CUTCLIFFE,
Bird-in-Hand Court,
76, Cheapside, E.C.,
Appellants' Solicitors.