

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
The Florence Mining Company, Limited
v. The Cobalt Lake Mining Company,
Limited, from the Court of Appeal for
Ontario: delivered the 18th March, 1910.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

LORD SHAW.

[*Delivered by Lord Collins.*]

This is an Appeal from the decision of the Court of Appeal for Ontario affirming the Judgment of Riddell, J., dismissing a claim by the Plaintiff Company, as assignees of one W. J. Green, to be entitled to certain lands and minerals situate under the waters of Cobalt Lake, in the Province of Ontario, and constituting claim J.S. 71, containing about 20 acres, which claim was alleged to have been discovered by W. J. Green and duly staked out as a mining claim in accordance with the Mines Act and regulations passed thereunder. The Plaintiffs' case is that, notwithstanding the existence of the said claim, the Crown assumed to sell and grant to the Defendant Company the lands described in certain Letters Patent, including therein the portion embraced in the said mining claim J.S. 71;

that such sale was made without any legislative authority, and the Letters Patent were issued erroneously and by mistake and improvidently, and are utterly void as against the Plaintiffs; and they claim a declaration that the said Letters Patent are utterly void as against them and that they are entitled to the lands and minerals, and that the Defendants' rights, if any, are subject to the Plaintiffs' said rights, and they claim an injunction against extracting or removing ore or minerals, or interfering with the Plaintiffs' exclusive right of possession; an account; and further or other relief.

Riddell, J., dismissed the Plaintiffs' claim with costs.

The Plaintiffs in this case are met *in limine* by a very great difficulty. They have completely failed to establish their claim to have made a discovery within the provisions of the Mines Act to the satisfaction of the officer charged with the duty of seeing that the regulations are duly observed.

By an Order in Council duly made and approved by the proper Authority on the 14th August, 1905, certain land in the Nipissing District and also the lakes known as Cobalt and Kerr Lakes, situate in the township of Coleman, were withdrawn from exploration for mines and minerals and from sale, lease or location.

It was not until the 7th March, 1906, that W. J. Green obtained a miner's licence, and at 4 p.m. on that evening he claimed to have made a discovery of minerals situate in place under the waters of Cobalt Lake. As already pointed out, Cobalt Lake had been withdrawn from exploration for mining purposes by the Order in Council of the 14th August, 1905; nor did the subsequent Orders in Council of the 28th August, 1905, and the 30th October, 1905, as pointed out by the Chief

Justice at p. 121 of the Record, indicate any intention to supersede the former Order withdrawing the Cobalt Lake from exploration for mines and minerals. He also points out the failure on the part of Green and his agent to take steps to have the inspector present when they withdrew a sample of ore from the drill, and the careless manner in which the claim was staked out by poles driven into the ice, which necessarily disappeared on the breaking up of the ice.

The trial Judge describes this process, which was intended to secure an accurate record of physical landmarks indicative of the site, by stating that "a survey was at once had, and *staking after a fashion made.*" The officials refused to recognise or record Green's claim, on the ground that they had been instructed to ignore it, because the Cobalt Lake had been withdrawn from exploration by the Order in Council of the 14th August, 1905.

The Letters Patent for the site issued to the Defendant Company were confirmed by an Act of the Ontario Legislature, which both the Courts below regarded as within their jurisdiction and otherwise unimpeachable.

As the Plaintiffs have failed to establish their own title, it becomes unnecessary to consider this point, but their Lordships see no reason to differ from the conclusion of the Courts below. Their Lordships will therefore humbly advise His Majesty that the Appeal be dismissed with costs.

In the Privy Council.

**THE FLORENCE MINING COMPANY,
LIMITED**

v.

**THE COBALT LAKE MINING
COMPANY, LIMITED.**

LONDON:
Printed for His Majesty's Stationery Office,
By LOVE & MALCOLMSON, LTD., Dane Street,
High Holborn, W.C.,
1910.