

setting aside the Crown grants to Alexander, although the mines and minerals embraced therein were possessed under the Crown by him and his successors from the date of the grants until now. This demand being upheld, ejectment of the respondents would follow.

The appellants claim anterior and superior and still existing rights in the subject of the grants. It is unnecessary to go into the details of this case, which, in the opinion of the Board, is, on its merits, very clearly settled by reference to the sections of the Minerals Act about to be mentioned.

Suffice it to say that in the year 1899 gold was discovered in Northern British Columbia, and twelve claims were staked out therein. The owners formed a mining partnership under the name of The Aga Gold Mining Company, their agreement being filed with the Mining Recorder at Atlin in February, 1900. In the same year the Engineer Mining Company (the appellants) was incorporated, apparently intending to take over the assets and business of The Aga Company.

No title, however, to any of the claims was ever furnished by The Aga Company to the appellants, and no record of any transfer or title was filed with the Mining Recorder. In 1906, however, the appellant Company produced from time to time documents purporting to transfer, not the whole, but very nearly the whole, of the mining claims which had been staked by the original claimants. Counsel for the Crown gave the opinion that as the claims were vested in the Aga Company they could only be transferred by the Company itself.

Notwithstanding all that has been said in argument, it is plain beyond question that the appellant Company accepted that position. It went so far as to ask a return of the fees paid by it to the Government. The voucher of the 29th April, 1907, is produced for \$32.50, being "for refund of mining rights." In gremio of the receipt occurs the following :—

"Receipts issued for the record of certificates of improvements for thirteen mineral claims, which certificates were not issued as the claims were not valid existing claims."

This receipt is signed by the Secretary of the appellant Company. This is the same Company as now claim in this appeal to have an existing fundamental equitable title to these claims, and the minerals embraced therein, a title sufficient to give them a right to demand the cancellation of Crown grants given to Mr. Alexander and acted upon and possessed under during all the years prior to the institution of this suit, namely, from 1907 to 1920.

The demand seems audacious enough ; and, in their Lordships' opinion, agreeing with that of the Courts below, it is wholly without foundation in law. It needs only be added by way of narrative, that in 1907 the appellant Company had their grant re-located in the name of several parties representing and interested in it. These re-locators "failed to do and record the requisite

assessment work required to be done and recorded by the Mineral Act, and, therefore, by force of the Act itself, these re-locations expired on the effluxion of the time for recording the work. In addition to allowing the claims to expire, the Company allowed its free miner's certificate to lapse, and lost its legal status as a Company entitled to hold mineral claims in this Province. It did not rehabilitate itself until several years thereafter." These sentences are quoted from the opinion of the learned Chief Justice MacDonald, and the points of the narrative were assented to at the bar as correct.

Their Lordships are of opinion that Section 9 of the statute directly applies to such facts :—

"Subject to the proviso hereinafter stated"—(none of the conditions to the proviso bear upon the point)—"no person or joint stock company shall be recognised as having any right or interest in or to any mineral claim or any minerals therein, or in or to any water right," etc., "unless he or it shall have a free miner certificate unexpired, and on the expiration of a free miner certificate the owner thereof shall absolutely forfeit all his rights or interests in or to any mineral claim and all or any minerals therein . . . unless such owner shall on or before the day following the expiration of such certificate obtain a new free miner certificate."

As already indicated, the appellant Company's certificate expired, and it remained expired from about the year 1907 to the year 1920. It is said that, notwithstanding this, and notwithstanding the same mineral claims having been the subject of fresh Crown grants to other persons, the appellant Company retain what was said in argument to be a fundamental equitable title to the mining claims. In the opinion of their Lordships, no countenance can be given to such an idea. It is not only expressly antagonistic to the comprehensive exclusion from claims and minerals of any rights and interests therein as the statute declares; but it would introduce uncertainty into mining rights in the Province, and confusion into both the records and administration thereof. It cannot be supposed that such comprehensive language could be employed and yet leave open the opportunity to undermine these mineral rights by some alleged reserved equitable title.

This, in the opinion of the Board, would be sufficient to dispose of the claim. A word, however, may be added as to the appellant Company, at whose instance this suit is brought. It is a Company which had itself disappeared for many years from even the register of companies in the Colony. Shortly before this action was raised, it applied to get itself again on the company register, the idea apparently being that while the Company had itself disappeared as a legal entity entitled to hold mining rights, it could be resuscitated so as to be restored again into activity some day, and enable it to go back upon the period of its disappearance, claiming that some equitable title in the non-existent legal entity remained dormant but capable of re-assertion.

This results in a mere confusion, opposed at once to legal possibility and to sound administration.

Another matter was also fully argued, and their Lordships think it right to deal with it. Section 53 of the Act provides that "no free miner shall suffer from any acts of omission or commission or delays on the part of any Government official if such can be proven." It was added to this that the application of the appellant Company in the year 1906 to be recorded as the owner of The Aga Mining Company's claims to the transferee was wrongfully refused because there was a transfer from The Aga Company of its assets, and upon a scrutiny or calculation it would have been discovered that The Aga Company's assets included these mining claims. Their Lordships desire to make it clear that, in their view, a general transfer of assets does not meet the requirements of the statute. Mining claims are geographically entities, they are separately numbered or named, and the record of each should be in such a position as to be separately traceable. Otherwise records in the Province would be deprived of much of their legitimate value. It is a simple thing to demand that the claim itself should be directly transferred; such rights should not be left *quo ad* the records to inferential treatment. Allusion has already been made to the fact that the appellant Company now challenging the action of the Government Mining officials as improper, accepted and acted upon it, got its applicants' fees returned to it, and disappeared from the ground. It would accordingly upon general legal principle appear to be completely barred from raising the present question after third parties' rights have without fraud come into existence. But, apart from that, in the opinion of the Board, the action of the Government officials was right.

It is, however, by these suggestions not only that the action was wrong, but that Mr. Alexander knew that it was wrong, that he can, it is said, constructively be charged with fraud. There are, in the opinion of the Board, no grounds for such a charge, and no considerations of fraud enter into the determination of the rights of parties in this case.

This being so, Section 37 (1) accordingly and plainly applies to the certificate of improvements issued to Mr. Alexander. "A certificate of improvements, when issued as aforesaid, shall not be impeached in any Court on any ground, except that of fraud." It is unnecessary to refer to Sub-section 2 of this Section under which the claim now made by the appellants would appear to be completely excluded also because of not having been presented as that of an adverse claimant within the period of sixty days from the publication of the notice of Mr. Alexander's claim.

Chief Justice MacDonald, as did Clement J., founded his judgment upon this Section; and in their Lordships' opinion the views expressed by these learned judges are entirely correct; but, in deference to the dissenting opinion of McPhillips J. and in view of the full argument presented to the Board, their Lordships have dealt with the further points as above.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs against the appellant Company.



In the Privy Council.

THE ENGINEER MINING COMPANY AND
ANOTHER

vs.

JAMES ALLEN FRASER AND OTHERS.

DELIVERED BY LORD SHAW.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.

1922.

(C 2157--14)*

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