CASES ARE SETTLED

Intricate Points Involved in Mining Suits

Mr. Justice Dugas Renders Important Judgment Interpreting Regulations.

By the judgment rendered day before yesterday in the territorial court by Mr. Justice Dugas three complicated and most perplexing cases that have been bitterly contested for a long time are finally disposed of. The cases referred to are William Edward Thompson vs. William Meikle et al (two cases) and John Wesley Miller et al vs. Albert Trabold et al., the actions arising out of the conflict of boundaries of a hillside claim on Bonanza near Monte Cristo gulch, a hillside on Monte Cristo and some benches in the same vicinity. Five different claims are involved, all of them having been staked during the summer of 1898. What is known as the "Jackson" and "Dewar" claims belong to the defendants, the "Claussen" claim to the plaintiffs Miller et al, the "Dickey" claim to Thompson et al, while the "Mosseau" claim is owned by third parties not interested in the suit. The gist of his lordship's decision is as follows:

The "Dewar" claim having been staked prior to the "Claussen" and "Dickey" claims, it is argued by the defendants that they are entitled to the whole of the territory in dispute, relying upon the affirmation that the "summit of the hill is outside of the 1000 feet" and that even if it were not their claim, being described by metes and bounds, they would be still entitled to the same as being covered by the description thereof given in the grant. This claim is a hillside claim opposite No. 3 Monte Cristo creek claim, and has a length of 250 feet up and down the creek. It is pretended by the defendants that it extends up hill as far as the "Bradley" claim, the line of which, the defendants submit, is even within the 1000 feet allowed by the regulations of 1898, inasmuch as the summit of a hill does not intervene between.

The "Claussen" claim is what is known as a bench claim, and is situated near the upstream line of the defendants' claim. The "Dickey" claim is a hillside claim, staked off Bonanza creek claim.

Monte Cristo is a tributary of Bonanza creek, and, therefore, both the "Dickey" claim and the "Dewar" claim, if allowed to extend the 1000 feet up hill, meet at certain angles on the hill. The question is, which of the two, under the circumstances, is to be considered as extending beyond the disputed limits.

The "Claussen" claim, although being opposite, happens to fall on the same disputed ground but to a more limited extent, and the main point in these cases is the determination of the upper line of the defendants' claim, the "Dewar." Besides relying upon the grant, which the defendants pretend would, at all events give them all the ground which they claim, it is argued that the upper line nowhere reaches any summit of a hill behind it, therefore, the question is: What is to be considered, under the terms of the regulations, the summit of a hill. Here the topography or configuration of the ground, after the brow of the hill has been reached, and which is within 200 feet from the foot thereof, has to be considered. A description thereof has been given by witnesses, and more particularly, the different surveyors which were heard, amongst whom Mr. Greene is more especially noted. He has taken levels, and the whole evidence shows that off Monte Cristo, after a certain distance from the brow of the hill, the ground gradually rises until it has attained sufficient elevation to bring the waters, coming from a more elevated position, from the left towards Bonanza, so that they will divide, part flowing into Bonanza upon the "Dewar" claim and part towards Monte Cristo, on the defendants' claim, or those in their vicinity. This elevation is, therefore, considered and described as "the watershed" which the plaintiffs pretend should be the line limiting the defendant's claim up hill. If this is accepted there is no doubt that the defendants by their works have encroached on both the "Dickey" and Claussen" claims, belonging, as above stated, to the different plaintiffs in the three cases.

As to the configuration of the ground it is right to add, that off Bonanza, to the left of the defendants' claim the real hill or mountain asserts itself at a shorter distance than the hills or mountains which are seen at a distance off the defendants' claim from Monte Cristo. In fact, after what is defined as the watershed line has been reached, the ground takes a rather sloping position, and, as near as I can remember no real hill or mountain elevation can be seen within a distance of, perhaps, about one, two or three miles, whilst off Bonanza the hill or mountain elevation is at a much shorter distance. I may say here, that upon the advice and consent of all the parties interested, I went to view the ground and the above description is founded as much upon what I have seen as upon the testimony of the different witnesses.

The defendants have relied a great deal upon the fact that in their grants the boundaries of their claims are defined by metes and bounds by which they pretend that this "Dewar" claim, being so defined, entitles them to whatever ground those metes and bounds cover, even if they had more than they would get if the definition had been given in the ordinary terms of the regulations; or, in other words, even if they were claiming further than the summit of the hill should it be accepted that it is the watershed. I cannot agree to that. Leaving the question as to what a summit is, I do not see that these pretentions can be sustained, either under the present circumstance, any more than under any other circumstances of a similar nature, for the crown, by its representatives, cannot be expected to give to any one free miner more ground than the regulations fix, for either a creek, hillside or bench claim. It is true that the grant mentions that the claim in question extends "1000 feet up hillside, bounded down stream by Jackson and Mousseau claims," and yet, this is not all their grants, as it declares that:

"The rights hereby granted are those laid down in the aforesaid regulations and no more, and are subject to all the provisions of the said regulations, whether the same are expressed herein or not.***"

Which I take to be that the claim will extend 1000 feet up the hillside provided otherwise nothing intervenes, according to the regulations, to prevent the claim from extending to that limit, and I believe it would not be attempted to sustain this pretention, if instead of a very slight watershed there had been a real summit of a real hill or mountain intervening within the 1000 feet, and, therefore, when it is determined whether "summit of a hill" is meant by the regulations, the fact of having mentioned these boundaries, more particularly in the terms invoked, does not change the position by giving more right to the defendants, and, therefore, it has to be maintained that the defendants are only entitled to the ground which is enclosed within the line to be drawn by following that summit. And now the question comes, whether the watershed, as above described, should be considered, under the regulations, as "a summit?" The point presents some difficulty, and I suppose that it is one upon which there can always be a difference of opinion. Until the question was decided in the affirmative by Mr. Justice Craig in the case of Fleischman vs. Creese, I understand that the contrary had been maintained at the gold commissioner's office. Under the circumstances I feel it my duty to adher to this opinion of my brother judge, although I am quite ready to admit, as he himself retorted to an argument before him, that the judgment of one judge did not create a precedent, yet, I believe that upon questions which are doubtful, and will remain so until settled by the higher courts, any judgment given under similar circumstances should have a great deal of weight and be followed, otherwise it would create such a disturbance, or put things in such an unsettled condition, that only great evils would spring therefrom. It would be different, if notwithstanding such decisions, the other judge would entertain no doubt as to its wrongfulness. Here I admit that before giving much consideration to the question I had, until these cases were presented to me, the simple idea that "the summit of a hill" was the highest point of a hill, forming part of the surrounding ground, yet I now can see what difficulties the accepting of this definition might create, and that, perhaps, it might just as well be exactly the point where, after having passed the brow of the hill, the ground takes such an elevation as to divert or divide the waters. Notwithstanding, it may be on the other hand very reasonably answered to the arguments of the plaintiffs that "technical words have to be accepted with their ordinary meanings," that the words "summit of a hill" used in the regulations are not, of themselves, technical, and that it would have been as easy and clear to have used the word "watershed" if this was really intended. Therefore, in accepting the conclusions of the plaintiff, I am actuated only by the fact that the question being doubtful, and having been settled by a judgment, I shall not disturb what has been maintained by another judge until the higher courts have pronounced themselves thereupon.

It has been argued that the plaintiffs in all the cases have acquiesced in the pretentions of the defendants by permitting them to work on the disputed ground for two years, making large expenses, and this without any protests on their part. Besides the fact that this is not clerely established, I think there is still a doubt as to whether any acquiescense by any neighbor of an adjoining placer claim, susceptible of reverting to the crown at any mament, and at all events the title of which, having to be renewed every year, would vest any such claim owner with more rights than what the crown really intended to give him under the regulations, for the crown is interested in seeing that whomsoever such a grant is given to does not take more than what he is entitled to under the same regulations. If a contrary principle was maintained a claim owner might that way extend the limit of any single claim indefinitely and after a certain time become owner of a number of claims under a single grant, which surely is not according to the spirit of the regulations, and by which the crown would yearly lose so much revenue however limited they might be. The public interest has also to be considered, and, as it is a principle clearly established by the same regulations, that all free miners shall be limited in their acquisitions of placer mines, this would be also a means of evading the same regulations and encroaching upon the rights of the public; this might be different on a quartz claim after the title has been granted in fee simple.

The stand I take in the three cases disposes of all the arguments of the defendants, and more particularly as to the previous grant to them, the notoriety of their possession, the fact of the crown being out of possession when the grant was issued to Dickey, and Dickey being out of possession when he conveyed to the plaintiffs, the action of authorized officials, coupled with the annual renewal of the defendant's grant, the acquisitions of Dickey and plaintiffs, the expenditure made by the defendants upon the ground, and, as I accept that the defendants never had any regular possession, under this grant, of the disputed ground, this disposes also of the argument brought against the plaintiffs, Thompson et al, that the possession thereof by the latter cannot be invoked against the defendants as it was allotted to them only after the gap between the "Mousseau" and "Bradley" claims had been opened. I do not believe, though, that the decision of the gold commissioner, and on appeal, that of the minister of the interior, is "res judicata." In California, where a system similar to that of our own was first established, it has always been maintained that the jurisdiction of the courts of justice is not ousted by any decisions of the land office, but the courts always hesitate to intervene whenever it is not apparent that gross injustice has been committed.

Upholding, therefore, that the plaintiffs are entitled to the ground which they respectively claim as their own, and taking the line of division between them as the one fixed by the gold commissioner in his decision, which has been produced in the case of Thompson before me, and which will be better determined in the judgment to be drawn up, the last point to decide is whether the defendants have to lose the moneys laid out by them in working the disputed ground. Under the circumstances, and taking into consideration the doubt which I myself entertain of the possible good faith which the defendant might have had that they were working on their own ground, and, taking also into consideration a certain amount of neglect or laches on the part of the plaintiffs by not preventing them from so doing within a reasonable time, I think that it would be an injustice to give them the whole advantage of the defendants' work, by declaring them entitled to all the gold extracted without charging the expenses made by the defendants.

I therefore hold that a referee should be appointed in order to ascertain, as near as possible, what amount of disputed ground has been worked by the defendants; what amount has been reasonably spent by them; the yieldings on such works, and the value, if it can be ascertained, of the gold so extracted, and that after deduction of any such charges and expenses the gold so extracted from both plaintiffs' claims—that is, from their respective claims—be adjudged to be the property of the plaintiffs proportionately, and as damages are claimed by Miller et al on account of the injunction against them, the referee will also report as to what damages the plaintiffs may have suffered thereby.

The injunction will be made permanent and the defendant will pay the costs in the three cases.

Two Shooting Affrays.

Great Falls, Mont., March 24.—As a result of two gun plays last night in the eastern part of Valley county, Mont., one man is dead and another is dying. William J. Allen, a squaw man and farmer at the Fort Belknap Indian sub-agency at Warm Springs Creek, was shot and instantly killed by Charles Perry, a half-breed, who is the wealthiest stockman and storekeeper on the agency. Perry has given himself up to the authorities.

At Yalta, Robert McDonald, a half breed known as "Big Bob," engaged in a quarrel with W. E. Ritchie. Ritchie beat Bob over the head with a heavy six-shooter and McDonald is expected to die. The sheriff and coroner left Havre this morning for Malta and thence to the sub-agency.

Body Drifted Ashore.

Nanaimo, B. C., March 24.—The body of W. Devine, a fisherman, who lived on an island in Departure Bay, came ashore today. Devine, who was 70 years old, went out six weeks ago in a canoe. There was no trace of him until the body came ashore yesterday. His canoe was never seen. He has no relatives here. An inquest was thought unnecessary.