

is impossible to believe that those who framed or those who passed the statute contemplated, and from which one's judgment recoils, there is in my opinion good reason for believing that the construction which leads to such results cannot be the true construction of the statute. See also Reg. vs. the Bishop of London, L. R. 23, Q. B. D., 429.

Mr. Taylor has referred me to the case of Dahl vs. Raunheim, 132 U. S. 260, where it was held that when a person applies for a placer patent in the manner prescribed by law, and all the proceedings are had which are required by the Statutes of the United States, and no adverse claims are filed or set up, and it appears that the ground has been surveyed and returned by the surveyor general to the local land office as mineral land, the question whether it is placer ground is conclusively established and is not open to litigation by private parties seeking to avoid the proceedings. But there is nothing in that decision in conflict with the reasons which guide me in this. There the defendant laid claim to three acres of a placer location of forty acres made by the plaintiff, the claim to the three acres being founded on the contention that the three acres contained a lode or vein which the defendant claimed as a mineral location. The dispute there was as between miners to the precious metals sought to be extracted from the property. As I have pointed out, the Act was intended to be conclusive of adverse rights of that character, but this is not a case of that kind.

To sum up, therefore, I am of opinion:

1. That the land in dispute was not, prior to the 23rd of March, 1893, held as a mineral claim.

2. That at the time of the location of the "Paris Belle" on the 3rd of January, 1895, the land was occupied by the plaintiffs for other than mining purposes, and that therefore the entry and location of the "Paris Belle" was, for want of compliance with the conditions as to security pointed out by Section 10 of the Act, illegal and void.

3. That the location was also void, on the ground that "rock in place" had not been discovered.

4. That the failure of the plaintiffs to file an adverse claim does not debar them from impeaching the validity of the defendants' title.

I therefore declare that the location and record of the "Paris Belle" mineral claim by the defendant Jerry was illegal and void, and that the defendants nor any of them are neither entitled to the rights and privileges of lawful holders of a mineral claim upon section 35, township 9, "A," Kootenay district, and that subject to the lawful acquisition in future of claims under section 8 of 55 Victoria, chapter 38, the plaintiffs are, as against the defendants, entitled to the exclusive use and possession of the before mentioned and described hereditaments. The plaintiffs will have judgment for possession of the said "Paris Belle" location. As the plaintiffs are not shewn to have sustained any, there will be no inquiry as to damages. The plaintiffs will recover their costs of suit, to be taxed in the usual way.