

and did not entitle the defendants to give evidence to impeach the patent.

I allowed the case to proceed subject to the objection.

At the close of the case Mr. Ritchie appeared for the Attorney-General and joined with counsel for the plaintiffs in making the same objection.

In the view I take of this objection and also of the plaintiffs' rights under the Land Titles Act, it is not necessary for me to determine any of the objections raised by plaintiffs to the validity of the defendants' mining claim, so far as it affects the strip in question, or whether its true northern boundary should not be south of the strip; but I will assume that the defendants' assignor, Clark, had, at the time of the issue of the patent in question, acquired the right to work the mining claim as surveyed by Mr. Holcroft, and that he had at that time complied with all the requirements of the Mines Act and regulations thereunder, up to and including a full compliance with the first year's working conditions.

I am unable to find that when the original patentees obtained the patent they were affected by any legal notice that any part of the land covered by the patent was in the possession of or claimed by Clark.

Conceding, therefore, that but for the patent and transfers thereafter, the defendants would be entitled as against the plaintiffs to possession of the disputed strip, and to work the same as part of their mining claim, it remains to be considered:—

(1) Whether the defendants can by their counterclaim impeach the patent, or so much of it as overlaps their mining claim, assuming it was issued erroneously or by mistake or improvidently; and

(2) Whether in any case, as against the plaintiff Eldridge, his certificate under the Land Titles Act is not a complete bar to defendants' claim.

As to the first question, there is no doubt that under the common law, "if a Crown grant prejudiced or affected the rights of third persons, the King was by law bound, on proper petitions to him, to allow his subject to use his royal name to repeal it on a *scire facias*, and it is said that in such a case the party may, upon enrolment of the grant in Chancery, have a *scire facias* to repeal it, as well as the King:" Chitty's *Prerogatives of the Crown*, p. 331; Blackstone's *Commentaries* (American ed.), book 3, p. 260.