

her gold mines, and her output of gold and dividends paid shows no sign of decrease, as is manifested by her production to the end of October, 1903, of 1,723,047 fine ounces for the ten months of the year, and her payment of £1,602,320 in dividends during the same period. She has sixteen State batteries (stamp mills), which have produced £736,016 worth of gold, and which are maintaining hundreds of small mines worked by their owners. She is rapidly dotting her gold fields with these small mines, and offering inducements such as no other State does to the hard-working and adventurous miner. Outside her nineteen declared goldfields, there are known auriferous belts running through hundreds of miles of yet unprospected country.

"Whilst it required sixty-four years to create a population of 65,037, at the end of the succeeding ten years (to October 31, 1903) it was 228,306. That population is steadily increasing, and finding employment at rates of wages which are, all round, the highest in the world. Her revenue was £575,822 in 1893; now it is almost £4,000,000. That large amount is mostly expended in the construction of roads, in mining and agricultural development, in public schools and works, and in bringing close to the doors of every inhabitant conveniences of civilization which many other and more populous States reserve for their large centres only."

RECENT LEGAL DECISIONS.

Tanghe vs. Morgan et al.

(Judgment of the Honourable Mr. Justice Martin.)

THIS is a mining case raising questions of novelty and importance.

On the 9th day of July, 1903, a lode claim called the Lucky Jack, was validly located near Poplar Creek, and is owned in whole or in part by the defendant Morgan.

Over two months thereafter, on the 7th of September, 1903, the plaintiff, acting in alleged exercise of his free miner's rights under the Placer Mining Act, located a placer claim called the Shamrock, wholly within the boundaries of the existing lode claim.

It may be opportune to mention that this is something which has not infrequently occurred in this Province, and is contemplated by the Mineral Act and Placer Mining Act, which clearly recognize that there may be different mining rights on the same ground; see e.g., secs. 11, 32, 37 and 129 of the Placer Act, and secs. 12 and 26 of the Mineral Act. Several placer claims were in fact located on lode claims in the district in question. Placer and lode miners have frequently mined on the same ground without experiencing any difficulty, but the situation is one in which unless the various owners act reasonably and considerately, ill-feeling and conflict may easily be engendered, and it therefore behoves all concerned to act circumspectly and openly.

On the 10th of September the plaintiff, after preparing in due form the documents required by the Placer Mining Act, applied at the proper office for a record of his claim, and at the same time tendered said documents and paid the lawful fee and got a receipt from an officer of the government then properly in charge, but by direction of the Gold Commissioner of the District, the defendant Frederick Fraser, the receipt given was not written on the customary office blank, but was drawn up in an informal manner, being what Fraser described as a "private receipt," whatever that may mean. The plaintiff asked for a record of his claim, but the Gold Commissioner practically refused to grant it on the ground that, as a result of an examination he had made that morning of the claim with the plaintiff, he, the plaintiff, had not proved it to be a bona fide placer location and therefore was not entitled to a record; and he stated that he would "hold the application over" and refer it to the Attorney-General's Department, and com-

municate with the plaintiff later. In the meantime, he made and left in the recorder's office the following memorandum for that officer's guidance:

"Memo. for Mr. Lucas.—This application is a subject of correspondence and is referred to the Attorney-General's Department, you will therefore be good enough to hold same over for final decision from Victoria.

"Yours obediently,

"FRED. FRASER,

"Gold Commissioner."

What fancied statutory authority the Gold Commissioner relied upon in support of this method of procedure it is impossible to say, but none exists. On the contrary, the Act is clear that if the free miner makes application in due form to record his location and furnishes the recorder with the application and affidavit in proper form as required by Sec. 11 of the Placer Mining Amendment Act, 1901, and pays the fee as provided by Sec. 27 of the Placer Act, he is, in the language of that Act, "entitled to record the same," and the right to the exclusive possession thereof is immediately vested in him under Secs. 31 and 32 subject to the observance of those requirements and other sections, such as 37, 38, 128 and 129.

It was the clear right, therefore, of the plaintiff at that time to obtain his record as soon as the clerk could record it, and it was likewise the plain duty of the Gold Commissioner not to interfere to prevent its issuance, for he had no inquisitorial powers or discretion in the matter. By this interference the plaintiff has suffered a wrong in not having had promptly granted to him that record to which he was entitled, and had there been no remedial statute he might have been placed in a very serious position by the error of the Gold Commissioner. But fortunately Sec. 49 of the Placer Mining Act Amendment Act, 1901, was enacted to deal with just such cases, and it is as follows:

"19. No free miner shall suffer from any act of omission or commission or delays on the part of any Government Official, if such can be proven."

It was argued that this Court could not give effect to this section, but, it may be asked, if this Court cannot give effect to it, what was the object in passing it, and by what tribunal, and when, can it be put into operation? I have no doubt whatever that the section was enacted for the purpose of enabling this or any other Court having jurisdiction in mining cases, to afford relief at the trial, or whenever proper, from the unfortunate consequences of an error of a government official, and I do not hesitate to apply it here, the result being that the plaintiff must be regarded as being in the same position as though he had actually received at the time of his application that record which was his right.

And in case it may be argued that the plaintiff did not properly represent his claim up to the beginning of the close season—the 1st of November—as required by Sec. 38, he would be excused in this case from the performance of the provisions thereof by the operation of said Sec. 19, because the Gold Commissioner by his illegal orders, prevented him from doing so, as did also the defendant Morgan and his associates.

It is not necessary to express an opinion on the point as to whether or no the Gold Commissioner was right in the circumstances in requiring the plaintiff to give security (under Sec. 12 of the Mineral Act or the same section in the Placer Act) for the object and in the manner and to the amount specified, because the demand was complied with and the point was not specifically raised nor argued.

Ultimately, and on the 24th of October, the delayed record was finally issued to the plaintiff which, as has been stated, should have been issued on the 10th September; but it was accompanied by the following document:

"Mining Recorder's Office,

"Kaslo, B. C., October 24th, 1903.

"E. Tanghe, Esq.,

"Poplar Creek, B. C.

"Re Shamrock Placer Claim:

"Dear Sir.—In confirmation of my conversation of this morning, and acting under authority of Section 128, subsection G, of the Placer Mining Act, I do now order the posts, marking the easterly boundary line of the above claim, to be moved so as to mark out the westerly boundary line of said claim leaving the now west boundary, the east line of said Shamrock Placer Claim.

"I might here state for your information that during the visit over this claim in company with Messrs. Morgan,