

and sections 2 (16) and 3 (1) and (5) of the Mines Act, 1906, seem to indicate an intention to withdraw from the Crown any right under its prerogative title to the precious metals. But if this be not so, the plaintiffs' case is not thereby advanced, for their claim, if any, is under the Mines Act, R.S.O., Cap. 36, and any grant to them would not be more extensive in terms or effect than the grant made to the defendants. However, the point is not properly open to the plaintiffs on this appeal.

There may be a question whether the plaintiffs are entitled to maintain this action as assignees of Green. Section 47 of the Mines Act, R.S.O., Cap. 36, enables a licensee who has discovered a vein or other deposit of ore or mineral to mark or stake out a mining claim, providing that it is on Crown Lands, not withdrawn from location or exploration, and "to transfer his interest therein to another licensee."

This appears to be the only provision in force when the transfer was made to the plaintiffs enabling a discoverer to transfer his interest to another. He does not appear to be authorized to make a transfer of a mining claim arising in respect of Crown lands withdrawn from exploration. The question whether, assuming that Green did acquire mining rights in or under Cobalt Lake, notwithstanding that it was withdrawn from exploration, he could make a valid transfer of such rights so as to enable his transferee to maintain an action in respect of them, was not raised or discussed, and it is not necessary to the disposal of the appeal that it should be considered.

The appeal must be dismissed.