

GOLD CREEK MINING CORPORATION, PETITIONER, VS. EULOGIO RODRIGUEZ, SECRETARY OF AGRICULTURE AND COMMERCE, AND QUIRICO ABADILLA, DIRECTOR OF THE BUREAU OF MINES, RESPONDENTS.

G.R. No. 45859. September 28, 1938

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This petition seeks to compel the respondents, as Secretary of Agriculture and Commerce and as Director of the Bureau of Mines, respectively, to approve petitioner's application for patent for a certain mining claim and prepare the necessary papers in relation thereto, and to forward and submit said papers for the signature of the President of the Philippines.

The petition alleges that petitioner owns the Nob Fraction mineral claim, situated in the barrio of Gomok, municipality of Itogon, sub-province of Benguet, Mountain Province, and located on public lands by C L. O'Dowd in accordance with the provisions of the Act of Congress of July 1, 1902, as amended by the Act of Congress of February 6, 1905, and of Act No. 624 of the Philippine Commission, relative to the location of mining claims; that said claim was located on January 1929, and the original declaration of location registered in the office of the mining recorder of Benguet, Mountain Province, on January 7, 1929; that from March 16 to 17, 1934, an amended location on the premises was made, for which an amended declaration of location was registered in the office of the mining recorder on April 3, 1934; that petitioner by itself and its predecessors in interest, has been in continuous and exclusive possession of said claim from the date of location thereof; that prior to August 9, 1933, petitioner filed in the office of the Director of Lands an application for an order of patent survey of said claim, which survey was duly authorized by the Secretary of Agriculture and Commerce and performed by a mineral land surveyor in the former division of mines, Bureau of Science, from August 9, 1933, to April 30, 1934, at the expense of petitioner; that the return of the surveyor, the plat and field notes of the claim and certificate that more than P1,600 worth of labor and improvements had been expended on said claim, were approved by the Director of the Bureau of Science; that prior to November 15, 1935, petitioner filed with the mining recorder an application for patent, together with a certificate showing that more than P1,600, worth of labor and/or improvements had been expended by petitioner upon said claim, and with the plat and field notes above mentioned; having previously posted a copy of such plat, together with notice of said application for patent in a conspicuous place upon said claim; and filed a copy of such plat and of such notice in the office of said mining recorder, as well as an affidavit of two persons that such notice had been duly posted; that prior to November 15, 1935, the notice of petitioner's application for patent was forwarded by the mining recorder to the division of mines, so that the latter could order the publication of said notice, as required by law; that the publication of the said notice was made once a week for a period of sixty days in the "Philippines Herald," "El Debate," and the Official Gazette, commencing February 13, 1936; that the sum of P113.59 was tendered to respondents, as payment for the purchase price of said claim, the area of which is 4.5434 hectares; and that

petitioner has requested the respondents, as Secretary of Agriculture and Commerce and as Director of the Bureau of Mines, respectively, to approve its application for patent, and to prepare the necessary papers relative to the issuance thereof and to submit such papers for the signature of the President of the Philippines, but the respondents have failed and refused, and still fail and refuse, to do so.

Petitioner claims that it is entitled, as a matter of right, to the patent applied for, having complied with all the requisites of the law for the issuance of such patent.

Respondents, in their answer, admit some allegations of the petition and deny others, and, by way of special defense, allege that "petitioner was not and is not entitled as a matter of right to a patent to the 'Nob Fraction' claim because the Constitution provides that 'natural resources, with the exception of public agricultural land, shall not be alienated'; and that the respondents are, not only under no obligation to approve petitioner's application for a patent to said claim and to prepare the necessary papers in relation thereto, but, also, in duty bound to prevent the issuance of said patent and the preparation of the aforesaid papers, because they have sworn to support and defend the Constitution."

This is one of several cases now pending in this court which call for an interpretation, a determination of the meaning and scope, of section 1 of Article XII of the Constitution, with reference to mining claims. The cases have been instituted as test cases, with a view to determining the status, under the Constitution and the Mining Act (Commonwealth Act No. 137), of the holders of unpatented mining claims which were located under the provisions of the Act of Congress of July 1, 1902, as amended.

In view of the importance of the matter, we deem it conducive to the public interest to meet squarely the fundamental question presented, disregarding for that purpose certain discrepancies found in the "pleadings filed in this case. This is in accord with the view expressed by the Solicitor-General in his memorandum where he says that "the statements of facts in both briefs of the petitioners may be accepted for the purpose of the legal issues raised. We deny some of the allegations in the petitions and allege new ones in our answers, but these discrepancies are not of such a nature or importance as should necessitate introduction of evidence before the cases are submitted for decision. From our view of the cases, these may be submitted on the facts averred in the complaints, leaving out the difference between the allegations in the pleadings to be adjusted or ironed out by the parties later, which, we are confident, can be accomplished without much difficulty."

Section 1 of Article XII of the Constitution reads as follows:

"Section 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, "except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant."

The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. The intention to which force is to be given is that which is embodied and expressed in the constitutional provisions themselves. It is clear that the foregoing constitutional provision prohibits the alienation of natural resources, with the exception of public agricultural land. It seems likewise clear that the term "natural resources," as used therein, includes mineral lands of the public domain, but not mineral

lands which at the time the provision took effect no longer formed part of the public domain. The reason for this conclusion is found in the terms of the provision itself. It first declares that all agricultural, timber, and mineral lands of the public domain, etc., and other natural resources of the Philippines, belong to the State. It then provides that "their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution." Next comes the prohibition against the alienation of natural resources. This prohibition is directed against the alienation of such natural resources as were declared to be the property of the State. And as only "agricultural, timber, and mineral lands of the public domain" were declared property of the State, it is fair to conclude that mineral lands which at the time the constitutional provision took effect no longer formed part of the public domain, do not come within the prohibition.

This brings us to the inquiry of whether the mining claim involved in the present proceeding formed part of the public domain on November 15, 1935, when the provisions of Article XII of the Constitution became effective in accordance with section 6 of Article XV thereof. In deciding this point, it should be borne in mind that a constitutional provision must be presumed to have been framed and adopted in the light and understanding of prior and existing laws and with reference to them. "Courts are bound to presume that the people adopting a constitution are familiar with the previous and existing laws upon the subjects to which its provisions relate, and upon which they express their judgment and opinion in its adoption." (*Barry vs. Truax*, 13 N. D., 181; 99 N. W., 769; 65 L. R. A., 762.)

It is not disputed that the location of the mining claim under consideration was perfected prior to November 15, 1935, when the Government of the Commonwealth was inaugurated; and according to the laws existing at that time, as construed and applied by this court in *McDaniel vs. Apacible and Cuisia* (42 Phil., 749), a valid location of a mining claim segregated the area from the public domain. Said the court in that case: "The moment the locator discovered a valuable mineral deposit on the lands located, and perfected his location in accordance with law, the power of the United States Government to deprive him of the exclusive right to the possession and enjoyment of the located claim was gone, the lands had become mineral lands and they were exempted from lands that could be granted to any other person. The reservations of public lands cannot be made so as to include prior mineral perfected locations; and, of course, if a valid mining location is made upon public lands afterward included in a reservation, such inclusion or reservation does not affect the validity of the former location. By such location and perfection, the land located is segregated from the public domain even as against the Government. (*Union Oil Co. vs. Smith*, 249 U. S., 337; *Van Ness vs. Rooney*, 160 Cal., 131; 27 Cyc., 546.)"

The legal effect of a valid location of a mining claim is not only to segregate the area from the public domain, but to grant to the locator the beneficial ownership of the claim and the right to a patent therefor upon compliance with the terms and conditions prescribed by law. "Where there is a valid location of a mining claim, the area becomes segregated from the public domain and the property of the locator." (*St. Louis Mining & Milling Co. vs. Montana Mining Co.*, 171 U. S., 650, 655; 43 Law. ed., 320, 322.) "When a location of a mining claim is perfected it has the effect of a grant by the United States of the right of present and exclusive possession, with the right to the exclusive enjoyment of all the surface ground as well as of all the minerals within the lines of the claim, except as limited by the extralateral rights of adjoining locators; and this is the locator's right before as well as after the issuance of the patent. While a lode locator acquires a vested property right by virtue of his location, made in compliance with the mining laws, the fee remains in the government until patent issues?" (18 R. C. L., 1152.) In *Noyes vs. Mantle* (127 U. S., 348, 351; 32 Law. ed., 168, 170), the court said:

"There is no pretense in this case that the original locators did not comply-with all the requirements of the law in making the location of the Pay Streak Lode Mining claim, or that the claim was ever abandoned or forfeited.

They were the discoverers of the claim. They marked its boundaries by stakes, so that they could be readily traced. They posted the required notice, which was duly recorded in compliance with the regulations of the district. They had thus done all that was necessary under the law for the acquisition of an exclusive right to the possession and enjoyment of the ground. The claim was thenceforth their property. They needed only a patent of the United States to render their title perfect, and that they could obtain at any time upon proof what they had done in locating the claim, and of subsequent expenditures to a specified amount in developing it. Until the patent issued the government held the title in trust for the locators or their vendees. The ground itself was not afterwards open to sale."

In a recent case decided by the Supreme Court of the United States, it was said:

"The rule is established by innumerable decisions of this court, and of state and lower Federal courts, that when the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term; and may be sold, transferred, mortgaged, and inherited without infringing any right or title of the United States. The right of the owner is taxable by the state; and is 'real property,' subject to the lien of a judgment recovered against the owner in a state or territorial court. (*Belk vs. Neagher*, 104 U. S., 279, 283; 26 L. ed., 735, 737; 1 Mor. Min. Rep., 510; *Manuel vs. Wulff*, 152 U. S., 505, 510, 511; 38 L. ed., 532-534; 14, Sup. Ct. Rep., 651; 18 Mor. Min. Rep., 85; *Elder vs. Wood*, 208 U. S., 226, [317] 232; 52 L. ed., 464, 466; 28 Sup. Ct. Rep., 263; *Bradford vs. Morrison*, 212 U. S., 389; 53 L. ed., 564; 29 Sup. Ct. Rep., 349.) The owner is not required to purchase the claim or secure patent from the United States; but so long as he complies with the provisions of the mining laws, his possessory right, for all practical purposes of ownership, is as good as though secured by patent." (*Wilbur vs. United States ex rel. Krushnic*, 280 U. S., 306; 74 Law. ed., 445.)

The Solicitor-General admits in his memorandum that the decision in the *McDaniel* case is determinative, of the fundamental question involved in the instant case. But he maintains "that this decision is based on a misapprehension of the authorities on which the court relied," and that it "is not well founded and should be abandoned." We do not deem it necessary to belabor this point. Whether well-founded or not, the decision in that case was the law when section 1 of Article XII of the Constitution became effective; and even if we were disposed to overrule that decision now, our action could not affect rights already fixed under it.

Our conclusion is that, as the mining claim under consideration no longer formed part of the public domain when the provisions of Article XII of the Constitution became effective, it does not come within the prohibition against the alienation of natural resources; and the petitioner has the right to a patent therefor upon compliance with the terms and conditions prescribed by law.

It remains to consider whether mandamus is the proper remedy in this case. In *Wilbur vs. United States ex rel. Krushnic*, supra, the Supreme Court of the United States held that "mandamus will lie to compel the Secretary of the Interior to dispose of an application for a patent for a mining claim on its merits, where his refusal to do so is based on his misinterpretation of a statute." In the course of its decision the court said: "While the decisions of this court exhibit a reluctance to direct a writ of mandamus against an executive officer, they recognize the duty to do so by settled principles of law in some cases. (*Lane vs. Hogle*, 244 U. S., 174, 181; 61 L. ed., 1066, 1069; 37 Sup. Ct. Rep., 552; and case cited.) In *Roberts vs. United States* (176 U. S., 221, 231; 44 L. ed., 443, 447; 20 Sup. Ct. Rep., 376), referred to and quoted in the *Hogle* case, this court said:

" 'Every statute to some extent requires construction by the public officer whose duties may be denned therein. Such officer must read the law, and he must therefore, in a certain sense, construe it, in order to form a judgment from its language what duty he is directed by the statute to perform. But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law direct him to perform an act in regard to which no discretion is committed to him, and which, upon the facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some

degree a construction of its language by the officer. Unless this be so, the value of this writ is very greatly impaired. Every executive officer whose duty is plainly devolved upon him by a statute might refuse to perform it, and when his refusal is brought before the court he might successfully plead that the performance of the duty involved the construction of a statute by him, and therefore it was not ministerial, and the court would on that account be powerless to give relief. Such a limitation of the powers of the court, we think, would be most unfortunate, as it would relieve from judicial supervision all executive officers in the performance of their duties, whenever they should plead that the duty required of them arose upon the construction of a statute, no matter how plain its language, nor how plainly they violated their duty in refusing to perform the act required.'

"

In the instant case, we are not justified, upon the state of the pleadings, to grant the relief sought by the petitioner. Considering, however, that the refusal of the respondents to act on the application for a patent on its merits was due to their misinterpretation of certain constitutional and statutory provisions, following the precedent established by the Supreme Court of the United States in *Wilbur vs. United States ex rel. Krushnic*, supra, a writ of mandamus should issue directing the respondents to dispose of the application for patent on its merits, unaffected by the prohibition against the alienation of natural resources contained in section 1 of Article XII of the Constitution and in Commonwealth Act No. 137. So ordered.

Avanceña, C. J., Villa-Real, Imperial, and Diaz, JJ., concur.

CONCURRING IN THE RESULT

LAUREL, J.:

This is a case, as I understand it, of a mining claim whose location was duly perfected under a law of the Congress of the United States prior to the inauguration of our Commonwealth. This law of the Congress is the Act of July 1, 1902, the first Congressional legislation that gave us a cherished bill of rights.

I express the opinion that a perfected location of a mining claim is an "existing right" within the purview of section 1, Article XII, of our Constitution. It is a substantial property right and permits the locator to take all the necessary steps leading to the issuance of a patent. It is not contingent or expectant because contingency or expectation is neither property nor property right. It is a legal right in the sense that it is recognized by law and acknowledged by the Constitution. And recognition implies protection. I must, therefore, reject the suggestion that by the interposition of the Constitution such a right had been wiped out or frittered away notwithstanding the saving clause therein contained and now to be referred to.

The saving clause in the section involved of the Constitution was originally embodied in the report submitted by the Committee on Nationalization and Preservation of Lands and Other Natural Resources to the Constitutional Convention on September 17, 1934. It was later inserted in the first draft of the Constitution as section 13 of Article XIII thereof, and finally incorporated as we find it now. Slight have been the changes undergone by the proviso from the time it came out of committee until it was finally adopted. When first submitted and as inserted in the first draft of the Constitution it reads: "subject to any right, grant, lease, or concession existing in respect thereto on the date of the adoption of the Constitution." As finally adopted, the proviso reads: "subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution." This recognition is not mere graciousness but springs from the just character of the government established: The framers of the Constitution were not obscured by the rhetoric of democracy or swayed to hostility by an intense spirit of nationalism. They well knew that conservation of our natural resources did not

mean destruction or annihilation of acquired property rights. Withal, they erected a government neither episodic nor stationary but well-nigh conservative in the protection of property rights. This, notwithstanding nationalistic and socialist traits discoverable upon even a sudden dip into a variety of the provisions embodied in the instrument.

But while I regard the recognition and protection of the right here invoked inevitable, I feel constrained to withhold my assent to the invocation of the case of *McDaniel vs. Apacible and Cuisia* ([1922], 42 Phil., 749), insofar as citation thereof may imply unqualified acceptance of or adherence to the broad rule that where there is a valid and perfected location of a mining claim, the area covered is not only thereby segregated from the body of the public domain but becomes the private property of the locator. My opinion is that while the locator, under the circumstances, secures the beneficial ownership or the dominium utile, the government retains the bare ownership or the dominium directum, until the locator's claim ripens into full ownership upon full compliance with all the requirements of the law for the issuance of a patent I, therefore, concur in the result.

DISSENTING

CONCEPCION, J.:

With regret, I have to dissent from the opinion of my learned colleagues in this very important case now under advisement. We are concerned with the correct construction of a constitutional prohibition in a matter directly related to the conservation of a great portion of our national wealth: the mines.

Because of the refusal of the respondents, the Secretary of Agriculture and Commerce and the Director of the Bureau of Mines, to approve the application of the petitioner, Gold Creek Mining Company, for the issuance in its favor of the patent for or title to a mining claim, and to prepare the papers necessary for the issuance of said patent and submit them for the signature of the President of the Philippines, the petitioner seeks to obtain from this court a writ of mandamus to compel the respondents to do what they refused to do. Instead of granting or dismissing the petition, the majority orders the respondents to act on the application, which,—they rule,—is not affected by the prohibition against the alienation of natural resources contained in section 1 of Article XII of the Constitution and in Commonwealth Act No. 137.

This is the first point on which I disagree with the majority, for the reason that, as alleged in the petition, the respondents refused to approve the petitioner's application and, on the other hand, that the Solicitor-General pointed out in his memorandum that the statement of facts contained in the briefs of the petitioner may be accepted for the purpose of deciding the legal questions raised; and although there are some discrepancies between the allegations of the parties, they are not of such nature or moment as would require the introduction of evidence before the case is submitted for decision. In my opinion, this court should now dispose of the petition for mandamus on its merits, granting or dismissing the same, instead of ordering the respondents to act on the petitioner's application, it being a fact that said respondents had already acted by denying said application.

Now, considering the petition on its merits, should we order the respondents to approve the petitioner's application for patent, or should we, on the contrary, deny the remedy prayed for? In other words, should we hold that the petitioner is entitled to the patent applied for, or on the contrary, that it has not acquired such right?

Section 1 of Article XII of the Constitution provides as follows:

"All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other

mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant."

The majority maintains that the foregoing constitutional provision prohibits, the alienation of natural resources and that the term "natural resources" includes mineral lands of the public domain, but not the mineral lands which at the time the provision became effective no longer formed part of the public domain. The majority further states that the claim in question, having been located prior to the inauguration of the Commonwealth, has ceased to be land of the public domain and, therefore, does not fall within the prohibition contained in the foregoing section which expressly provides, that the natural resources shall not be alienated.

It is true that the mining claim in question was located prior to the inauguration of the Commonwealth on November 15, 1935. It may be conceded that a location, once made and perfected, operates to segregate the land from the public domain, but this in no wise means that the Government parts with the absolute ownership over the mining claim by the mere fact of its location. Location should only be understood as segregating the "land located from the public domain in the sense that it is no longer open to location or susceptible of appropriation by another, while the locator has not lost his right to or abandoned the mining claim. To give a broader meaning and a greater effect to the location of a mining claim is to contend—against the express provisions of sections 36, 37 and 39 of the Act of Congress of July 1, 1902, as amended by section 9 of another Act of Congress of February 6, 1905,—that location is all that is necessary to acquire absolute ownership over a located mining claim. This is not the law. From the location of a claim to the issuance of the patent for or title to the land, is a far cry. Location, without more, confers only the right of possession. Thus section JJ6 of the Act of Congress of February 6, 1905 refers to the "manner of recording, and amount of work necessary to hold possession of a mining claim." Section 39 of the same Act also speaks of the right of possession of the claim, and the right to the issuance of a patent only arises after the execution of certain works and acts prescribed by law, such as the labor or improvements made each year (sec. 36); the full description and identification of the land by means of plat and field notes (sec. 37); the notice and publication of the application for a patent by the locator, etc., etc. (sec. 37).

The same majority states: "The legal effect of a valid location of a mining claim is not only to segregate the area from the public domain, but to grant to the locator the beneficial ownership of the claim and the right to a patent therefor upon compliance with the terms and conditions prescribed by the law." (Underscoring mine.)

Well, then: the Act of Congress does not fix any period within which the conditions prescribed ought to be complied with. It does specify the time for recording a claim in the registry, but it does not determine the period within which to make the necessary annual labor or improvements thereon. The law requires universal publication and notice of the application for a patent for a determinate number of days, but it fails to fix the date when said notice may be made and published. The law requires that, if there be any claim adverse to the application for a patent, the corresponding action should be instituted in the proper court to determine who is entitled to the patent; but no period is fixed within which the litigation should be decided. The law finally requires the payment of a certain sum for every hectare of land covered by the mining claim before the patent is issued; but it does not prescribe the period within which to pay said sum, which is the price for the alienation of the land by the Government in favor of the applicant for the title or patent.

I now ask: Within what time must the conditions prescribed by the law be complied with in order that the locator may become entitled to the patent? I gather from the majority opinion that, as long as the location of the mining claim was perfected before the inauguration of the new Government of the Philippines on November 15, 1935, the other conditions may be complied with even after said date in order that the locator may acquire a right to the patent. I dissent on this fundamental point from the majority opinion. I maintain that in prohibiting the alienation of natural resources, save any existing right, the Constitution does not refer to the right of location or to the inherent right of possession, or to any inchoate or contingent right which are only a means to bring about another right; it refers only to the right to obtain a patent. And inasmuch as this right cannot be acquired until after compliance with all the conditions prescribed by law, it is evident that the prescribed conditions should be complied with before the inauguration, of the Commonwealth.

Was the petitioner entitled to the issuance of the patent for the mining claim in question before the inauguration of the Commonwealth on November 15, 1935? I hold that he was not, because on said date, according to the very allegations of the petition for mandamus, the publication in the newspapers of the application for a patent for a period of 60 days as prescribed by law had not been made, as said publication was only commenced on February 13, 1936. Neither was the payment of P25 per hectare made before the inauguration of the new Government, that is, the Government had not been paid the price for the alienation of the mineral land when Article XII of the Constitution went into effect. Petitioner's right, therefore, to the patent had not matured before November 15, 1935, wherefore, he falls squarely within the constitutional prohibition.

A similar thing has been provided for by Act No. 926, passed in October, 1903, and Act No. 2874, passed in November, 1919, in relation to public lands. Section 54, paragraph 6, of the first Act, and section 45, paragraph (b), of the second, provide that those who have been in possession of agricultural lands of the public domain since July 26, 1894, may acquire a perfect title of ownership; and it is necessarily inferred that those who commenced their possession of such lands after July 26, 1894 have no right to obtain title, notwithstanding the fact that their possession may have been for 10, 20 or 30 years. This is exactly what the Constitution has provided: to fix a time for determining those who have become entitled to the patent for a mining claim.

Although the provisions of the Act of Congress of 1905 are very clear and there is no better aid to construction than the law itself, I nevertheless cite the following authorities which support my points of view in this opinion.

"The locator of a mining claim under the United States laws, prior to the actual payment of the purchase-money and the issuance to him of the receipt therefor by the Land Department, possesses a mere privilege to purchase the property, and a constable's sale of the mine before payment only passes that privilege * - * ." (Hamilton vs. Southern Nev. G. & S. Min. Co., 33 Fed., 562.)

"* * * But he is not the owner of the land until he pays for it, and obtains the United States patent. It is a part of the public domain. In the meantime the defendant is occupying it under a mere license from the government, which may be revoked at any time by the repeal of the act giving it. * * * His license under the statute to occupy and to work it as mining ground is sufficient for that purpose until withdrawn by Congress, without purchasing it. * * * ?" (U. S. vs. Nelson, Fed. Cas. No. 15,864.) (Underscoring mine.)

"A prospector on the public mineral domain may protect himself in the possession of his *pedis possessionis* while he is searching for mineral. His possession so held is good as a possessory title against all the world, except the government of the United States * * * ." (Crossman vs. Pendery, 8 Fed., 693.)

"A possessory title, while it may not be divested by any one except the United States, may be avoided by the default of its owner, either by abandonment or by forfeiture for non-compliance with local regulations or with the statutory requirements as to annual labor * * * ." (1 The Law of Mines and Mining in the United States, Barringer & Adams, 318, 319.)

"Prior to the issuance of a patent the locator cannot be said to own the fee simple title. The fee resides in the general government, whose tribunals, specially charged with the ultimate conveyance of the title, must pass upon the qualifications of the locator and his compliance with the law. Yet, as between the locator and everyone else save the paramount proprietor the estate acquired by a perfected mining location possesses all the attributes of a title in fee, and so long as the requirements of the law with reference to continued development are satisfied, the character of the tenure remains that of a fee. As between the locator and the government, the former is the owner of the beneficial estate, and the latter holds the fee in trust, to be conveyed to such beneficial owner upon his application in that behalf and in compliance with the terms prescribed by the paramount proprietor." (Lindley on Mines, 3d. ed., sec. 539, p. 1200.) (Underscoring mine.)

I therefore vote for the denial of the petition.

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