

**THE UNITED STATES OF AMERICA BY ITS TRUSTEE, THE
GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND
APPELLANT, VS. THOMAS D. AITKEN, VICENTE COBAS, F. C. FISHER,
JAMES F. FISHE...**

G.R. No. 7952. July 30, 1913

Ponente: TRENT, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-7952/>

TRENT, J.:

In this case the Government seeks to eject the appellees from a parcel of land located by them under the mining laws as a placer mineral claim which, according to their amended declaration of location, is "chiefly valuable for gravel, rock, building and construction material." The court below continued the appellees in the possession of all the land covered by the amended declaration of location with the exception of the banks and bed of the Moriones River, which was held to be a navigable stream and not, therefore, susceptible to location as a mineral claim.

The dispositive part of the trial court's judgment reads:

"(1) On the finding of fact made herein the court concludes that, being a navigable stream, neither the bed, banks, nor water of the Moriones River is susceptible of alienation by location or patent as mining claims, and that in consequence the location of defendants is void as to that part of the location covering the bed and banks of said river, as to which part of the land embraced within the claims in question defendants are mere trespassers and should and must be ejected.

" (2) That being unoccupied, nonagricultural, nontimber, unreserved public land, that part of the land embraced in said location outside of the banks and bed of said Moriones River was and is susceptible of alienation by location and patent as mining claims, and as to that part of said claims the defendants are in proper and legal possession and entitled to be continued therein.

"(3) That gravel being embraced within the term 'building stone' used in the Act of Congress of July 1, 1902, the gravel beds contained within the claims in question outside of the bed and immediate banks of the Moriones River were and are susceptible of alienation by location and patent as placer mining claims.

"The court adjudges and decrees that the plaintiff is entitled to the exclusive possession and control of that part of the located land included within the banks and bed of the Moriones River, and orders the defendants to restore to plaintiff said possession and control, and further condemns the defendants to pay the costs of these proceedings."

This judgment Was further amplified as follows:

"It having been brought to the attention of the court by counsel for defendants that the judgment dictated herein on October 13, 1911, does not define with sufficient certainty the banks and bed of the Moriones River, said judgment is hereby amended and made more certain and definite by decreeing that the part of the located claims from which defendants are ejected is that part formed by the bed or channel and the natural banks of the Moriones River, which banks are indicated by the heavy white lines following the meanderings of said river on

the plat Exhibit A, together with the public easement along" said banks reserved by the Law of Waters."

From this judgment the plaintiff alone appealed, while the appellees ask that the judgment of the trial court be affirmed.

This court handed down a decision at the close of the last term reversing the judgment of the lower court so far as it aimed to continue the appellees in possession of that part of the land not included within the bed and banks of the Moriones River, and directed that the Government be restored to the possession of the entire tract. In accordance with the statement contained in that decision, the court now proceeds to set forth its reasons for the position taken.

In view of the fact that the trial court held that the Moriones River is a navigable stream and that its bed and banks are not susceptible of location under the general mining laws, and there having been no appeal with reference to this part of the judgment, it is therefore not before us for consideration.

The description of the land sought to be located in the amended declaration of location is as follows:

"That corner No. 1 of said claim is established by tree in place on the southeasterly bank of the Moriones River. Notice of location posted thereon and is marked 'Corner No. 1, Multa placer mining claim.' That corner No. 2 is approximately 1,200 meters in a southeasterly direction from corner No. 1, and is established by tree in place on which is inscribed 'Corner No. 2, Multa placer mining claim.' That corner No. 3 is approximately 650 meters in a southwesterly direction from corner No. 2, and is established by a tree in place on which is inscribed 'Corner No. 3, Multa placer mining claim.' That corner No. 4 is approximately 300 meters in a northwesterly direction from corner No. 3, and is established by a tree in place on which is inscribed 'Corner No. 4, Multa placer mining claim.' That corner No. 5 is approximately 350 meters in a northeasterly direction from Corner No. 4, and is established by a post on which is inscribed 'Corner No. 5, Multa placer mining claim.' That post No. 6 is approximately 900 meters in a northwesterly direction from post No. 5, and is established by a tree in place on which is inscribed 'Corner No. 6, Multa placer mining claim.' "

The Government submitted Exhibit A, which is a plan of the land made by the Bureau of Lands. With reference to the admission of this exhibit, the following appears of record:

"Counsel for the defendants admits the accuracy of the plan marked Exhibit A submitted by the plaintiff, with the exception that he does not admit that the line which runs from A to B and which is designated 'High water' is an accurate portrayal of the high-water mark in that vicinity. It is admitted that the plan is correct as to the contour of the river and the location of the claim."

We may accept for the purposes of this case the statement of the trial court in its amended judgment with reference to the banks of the Moriones River.

From the fact that the declaration of location filed by the appellees is null and of no effect as to the banks and bed of the Moriones River, the remainder of the land which the appellees seek to locate is divided into five distinct, noncontiguous parcels, separated from each other by the river. This raises the question whether the declaration of location is valid as to these disconnected parcels. In other words, can a declaration of location embrace two or more noncontiguous parcels of land? It was decided by the Land Department of the United States in Tomera Placer Claim (33 L. D., 560) that a location embracing three several tracts of land, each being square in shape and connected by diagonal corners only, was of no value. It was said in disposing of the question that:

"There is no provision of the mining laws authorizing the locator, by virtue of a discovery of mineral within the limits of one parcel of ground, to embrace in his location another and entirely different parcel, lying wholly without such limits, and having separate and distinct boundaries, merely because the two parcels corner with each other. Tracts so situated are in fact and in the administration of the mining laws must be considered and

treated as constituting separate and distinct parcels of ground."

In support of this holding, *Kresin vs. Mau* (15 Minn., 116) and *Linn County Bank vs. Hopkins* (47 Kan., 580; 28 Pac, 606) were cited. While these cases involve an interpretation of homestead laws instead of a mining law, the requirements of both in this particular are analogous. This question has frequently arisen in connection with the exemption of homesteads of judgment debtors, and while the decisions in many jurisdictions are in conflict with the two cases cited, this is due to a difference in the phraseology of the laws construed. In the case at bar the different parcels do not even have the distinction of cornering each other, as the banks and bed of the Moriones River intervene between each parcel.

Again, section 23 provides that a mineral claim shall be marked by two posts, one of which shall be called the initial post, and distances given from these posts in such a manner that by no possibility could more than a single parcel of land be inclosed by the lines thus made. It would be impossible to comply with this regulation in the case of two or more noncontiguous parcels. Section 24 provides that a discovery post shall also be placed upon the claim showing where minerals had been found on it. Obviously, a discovery post upon one parcel of land would have no bearing upon another parcel. This would be especially true were the parcels located at some distance from each other, for once admitting that noncontiguous parcels could be so located, it would be difficult to refuse a patent because the distance between them was too great. Sections 25 and 26, also relating to the marking of the boundaries of the claim, preclude the idea of locating two noncontiguous parcels of land under one patent. The directions for marking out the claim, taken as a whole, clearly require that all the boundary lines of a claim be located. Section 37 stipulates the manner in which a patent may be obtained, and refers to the location as a piece of land. It would be obviously incorrect to use such language did it consist of several wholly separate parcels of land. Section 37 further requires that a survey shall be made of the claim and a plat and field notes showing accurately the boundaries of the claim shall be prepared and that the boundaries of the claim shall be distinctly marked by monuments on the ground. This information must further be embodied in the application published in the newspapers, and must also be in the hands of the Government official who issues the patent. According to the description and plat of the land in this case only six posts were used in marking off the location of the appellees, and the river is nowhere referred to in the declaration as a boundary line. So that even were the proposition that noncontiguous parcels could be located under one patent admitted, it would be resigning everything to chaos to relinquish the requirement that each of the boundary lines should be accurately set forth in the records pertaining to the patent. Under no circumstances, therefore, can appellees' description of location be considered sufficient to properly present the five remaining parcels of land for a patent.

But we do not desire 'to dispose of this case upon this ground alone. The main question involved is whether the material which induced the appellees to apply for a patent is susceptible of location under the mining laws. On the witness stand Mr. Stevenson, who filed the declaration of location on behalf of himself and the other appellees, testified'as follows:

"Q. So, as a matter of actual fact, you located this (claim) for the gravel contained in it?—A. Yes, sir."

The evidence shows conclusively that the land in question was located solely for the purpose of obtaining therefrom ordinary, nonmetalliferous gravel. Can this gravel be located as a placer mineral claim? The law pertinent is as follows:

Section 20 of the Act of Congress of July 1, 1902; "That in all cases public lands in the Philippine Islands valuable for mineral shall be reserved from sale, except as otherwise expressly directed by law."

Section 21, *ibid.*: "That all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation,. and purchase, and the

land in which they are found to occupation and purchase, by citizens of the United States, or of said Islands: *
* *"

Section 41, *ibid.*: "That any person authorized to enter lands under this Act may enter and obtain patent to lands that are chiefly valuable for building stone under the provisions of this Act relative to placer mineral claims."

Section 36, *ibid.*, as amended by Act of Congress of February 6, 1905: "That the United States Philippine Commission or its successors may make regulations, not in conflict with the provisions of this Act, governing the location, manner of recording, and amount of work necessary to hold possession of a mining claim, subject to the following requirements; * * *."

Section 1 of Act No. 624 of the Philippine Commission reads; "The term 'mineral claim' as used in these regulations shall be understood to mean 'lode claim' and the term 'mining claim' shall be understood to include both 'lode' and 'placer' claims. A placer claim shall be understood to mean a claim of land more valuable for placer mining, stone quarrying, or for the securing of earth for use in tile, brick, pottery, paint, or other manufacture, or of petroleum, guano, or other mineral product, than for other purposes. The rules and regulations for the securing of claims so defined as placer claims shall be as for placer claims as mentioned in this Act."

It is unnecessary to discuss the question raised in argument as to whether section 1 of Act No. 624 is altogether in harmony with the sections of the Act of Congress of July 1, 1902, which are quoted, *supra*. The latter Act specifies the substances that are susceptible of location, and the Insular Legislature can neither increase nor decrease the list. Upon this point the Congress has legislated, and its will is supreme. None will object to positing the statement that gravel such as the appellees seek to locate as a placer mining claim (and which for convenience will hereafter be called commercial gravel) must be classified either as a mineral or as building stone. And in the absence of particularity as to what those substances are, recourse must be had to the books to determine whether a particular thing is included within "mineral deposit" or "building stone."

It is true that commercial gravel belongs to the mineral kingdom in that it is inorganic and that it is formed by nature alone. But there is an important distinction between it and any of the so-called minerals as recognized by the authorities. Practically speaking, all the definitions of the word "mineral" agree that such a substance must always have a definite chemical composition by which it can be easily recognized, in whatever part of the earth it may be found. There can be no such uniformity in the chemical content of gravel deposits, for the reason that this depends entirely upon the character of the mineral deposits which have contributed to their formation. And upon the character, quantity, and proximity of the minerals to the gravel deposit, their susceptibility to erosion, the violence with which the erosion is accompanied, the duration of the eroding process, as well as various other facts, depends the size of the pebbles and the quality of the deposit as commercial gravel. There is nothing constant in the character of commercial gravel by which to identify it as a mineral, except that it consists of broken fragments of rock mingled with finer material, such as sand and clay. Nothing definite can be said of its chemical composition as can be said of the minerals. Commercial gravel is simply a jumbled mass of fragments of various minerals (rocks). Science, at least, cannot accept as a distinct subdivision of the mineral kingdom any substance whose character and attributes are so composite and fluctuating. It is true that beds of sandstone and limestone may possibly owe their origin in some instances to deposits of ordinary gravel, (Barringer and Adams on The Law of Mines and Mining in the United States; Enc. Brit, 11th ed., Title "Gravel.") But commercial gravel has not yet reached that stage. So far as scientific classification goes, then, commercial gravel cannot be considered as a mineral.

But it is urged, and rightly, that the legal definition of "mineral" is not in accord with the strict scientific definition of the term, and that it includes substances such as coal, asphalt, phosphate rock, etc., which, strictly speaking,

probably owe their origin to vegetable or animal life of past ages. As commercial gravel cannot be classified as a mineral, strictly speaking, it remains to be seen whether it may be so classified under the broader legal signification which the term "mineral" has acquired.

The leading English case of *Hext vs. Gill* (L. R., 7 Ch., 699, 712, 17 Eng. Rul. Cas., 429, 441) has often been quoted with approval:

"A reservation of 'minerals' includes every substance which can be got from underneath the surface of the earth for the purpose of profit, unless there is something in the context or in the nature of the transaction to induce the court to give it a more limited meaning."

The United States Land Department, whose decisions on the subject are recognized as of quasi judicial authority, announced the rule many years ago as follows;

"Whatever is recognized as a mineral by the standard authorities on the subject, where the same is found in quantities and quality to render the land sought to be patented more valuable on this account than for the purpose of agriculture, should be treated by the office as coming within the purview of the mining act of May 10, 1872." (Circular of Instructions, July 15, 1873.)

The Department has relied upon this definition many times in the course of its administration of the mining laws. During this time the definition has met with neither legislative nor judicial disapproval, and it consequently is deserving of great weight as an interpretation of the law by the executive department of the Government. Indeed, of all the definitions to be found, it is probably the least misleading, for the reason that "mineral" in a legal sense is no longer bound up in the etymology of the word, and the only method of determining its scope is to ascertain what is included within it by legal authorities.

Assuming that the gravel deposits which the appellees seek to locate could be worked at a profit, it might appear that commercial gravel would fall within the scope of the above definitions. If, however, an examination be made of the individual adjudicated cases and the decisions of the United States Land Department, upon which these general definitions of the term "mineral" are based, it will be found that commercial gravel was not a factor in forming them, and that it has never been considered as a mineral. It is as completely excluded from the legal definition of the term by the silence of the books on the subject as it is eliminated from any technical discussion of the subject by the failure to consider it at all. Nor can such exclusion be attributed to ignorance of its existence as has been the case with certain minerals which scientific investigation has but recently discovered, and whose discovery has necessitated widening the meaning of the term "mineral" so as to include them. Commercial gravel and its uses, at least for road making and the like, have been known from time immemorial.

To the argument that the general legal definitions with which we started would include commercial gravel as a mineral, we reply that such generalities lose their potency under the circumstances. They are not based upon a fundamental and universal law of nature. On the contrary, they are merely attempts to summarize the numerous decisions of courts of last resort dealing, in specific cases, with specific minerals. It is not claimed for them that they are either inclusive or exclusive, and their value is little more than a list of such minerals would be. Such lists are easily accessible. *Lindley on Mines* (2d ed.) exhausts both the English and American authorities (secs. 85 to 98), as does the monographic note to *Dwinnell vs. Dyer* (7 L. R. A. (N. S.), 763, 805). And as stated above, commercial gravel is not included in any of them.

The Act of May 10, 1872, was much more elaborately drawn than either of its predecessors, supersedes them in most important respects, and is, to all intents and purposes, the present law on the subject in the United States. Our own law is, essentially, its counterpart. In these general mining laws, as well as in other laws more or less related to the subject, no attempt was made by Congress to define the term "mineral." *Lindley on Mines* (2d ed.),

after reviewing" the above-cited laws and several others of minor importance, says (sec. 86):

"No legislative interpretation or definition of the term 'mineral lands,' which were so reserved and excepted, was ever attempted. This was left for judicial or departmental construction."

It is thus clear that in the enactment of legislation on the subject of mines and mining, Congress was content to accept the decisions of the other departments of the Government at the time of the various enactments upon the question of what was a mineral. The only legislative expressions of what should be included within the term as used in the mining laws are to be found in the Act of August 4, 1892, declaring building stone patentable under the provisions of law relating to placer mineral claims; the Act of February 11, 1897, making a like provision for petroleum; and the Act of January 31, 1901, by which saline lands could be patented in the same manner.

It is generally conceded that the first two of these three laws were enacted to definitely include building stone and petroleum within the operation of the general mining laws, rulings of the judicial and executive departments of the Government at the time of their passage being conflicting as to the mineral character of these substances. During the last half century and more, since it first legislated upon the subject, Congress has simply allowed the courts and the Land Department to determine what should be included within the meaning of the expression, interfering only when error had been committed. It is true that there appears to have been no ruling made by either of these departments (with the exception of one case which is discussed below) on the question whether commercial gravel is a mineral. Why the question has never arisen, whether because no one has ever desired to locate deposits of commercial gravel or because would be locators have concluded that it was not susceptible to location under the mining laws, we cannot say. But it is clear that it cannot be legitimately considered as a mineral in any scientific sense of the word, because it has been persistently ignored in all the treatises on mineralogy and kindred subjects. And to hold that the term "mineral" as used in the Act of July 1, 1902, includes commercial gravel, it would seem necessary to conclude that Congress intended to include within it a substance which, despite its frequency and the variety of the uses to which it was put at the time of the passage of the Act, had never been considered as coming within the term by any recognized authority. At the time of the passage of this Act, the use of commercial gravel in concrete construction was commonly known. It might almost be considered as indispensable to concrete work and, as such, and in view of the untold possibilities of concrete, to be of more importance to the commercial world than kaolin or China clay, for instance, which had been recognized as a mineral. Yet no effort was made to recognize by legislative enactment that which all the world had refused to do—that it was a mineral.

In *Zimmerman vs. Brunson* (39 L. D., 310, 1911), the United States Land Department was called upon to decide for the first time whether commercial gravel could be located as a placer mineral claim. In that case it was said:

"Conceding that the twenty acres are chiefly valuable for their deposit of gravel and sand, which can be used in connection with cement forming concrete used in the construction of buildings, does such a deposit confer upon them a mineral character so as to except them from homestead entry?"

After quoting the definition of a mineral as formulated by the Department in its Circular of Instructions issued in 1873 (quoted *supra*), it was said:

"A search of the standard American authorities has failed to disclose a single one which classifies a deposit such as claimed in this case as mineral, nor is the Department aware of any application to purchase such & deposit under the mining laws. This, taken into consideration with the further fact that deposits of sand and gravel occur with considerable frequency in the public domain, points rather to a general understanding that such deposits, unless they possess a peculiar property or characteristic giving them special value, were not to be regarded as mineral.

* * * * *

"The Department, in the absence of special legislation by Congress, will refuse to classify as mineral, land containing a deposit of material not recognized by standard authorities as such, whose sole use is for general building purposes, and whose chief value is its proximity to a town or city, in contradistinction to numerous other like deposits of the same character in the public domain."

It has been suggested that commercial gravel should be classified as building stone in view of the fact that it is much used in concrete construction.

We have just discussed the only case that has been found dealing with commercial gravel, in which the Land Department held that it could not be located as a placer mineral claim merely on the strength of the fact that it is used in concrete construction work; but it appears that in this case an attempt was made to prove that it belonged to the minerals. The Land Department would hardly have refused to issue a patent to the claimant in that case had the gravel and sand been capable of location under any of the provisions of the mining laws as a building stone. As there was no discussion of whether commercial gravel could be classified as a building stone, the only inference that can be drawn is that neither the Department nor anyone connected with the case considered commercial gravel to be a building stone. Indirectly, at least, the United States Land Department has declined to consider commercial gravel as a building stone. An examination of the authorities on the subject shows that only stone taken from quarries where it is found in place has been favorably considered as building stone. Moreover, the mining laws of the United States do not deal with minerals or stone artificially made. Such substances, to come within the operation of those laws, must be found where they were formed or deposited by natural agencies. Concrete, if considered as a building stone at all, must nevertheless remain an artificial stone. No building stone needs an artificial process to establish its character. It is a building stone when found by man in its natural state. But commercial gravel is not concrete, but an ingredient only, and even though concrete be considered as a building stone, it would certainly be as inappropriate to call commercial gravel concrete as to call concrete commercial gravel. Under no circumstances can commercial gravel be called building stone, merely because it is commonly used in concrete construction work.

But there is another more potent reason for excluding commercial gravel from the operation of the mining laws, founded on the broad grounds of public policy. Solely upon the Government devolves the duty of construction and maintenance of the public highways—an imperative duty, the performance of which is absolutely essential to the development and progress of the country. For the Government to divest itself of the ownership of road-building materials in the face of its obligation to use them in the exercise of one of its most important functions would be extremely unwise. The recognized minerals are relatively of little importance to the operations of government. The bulk of them are all devoted to private purposes, and the sale of the public lands containing them has proven on the whole to be a wise policy and an incentive to their development. Inversely, the Government is the chief user of road building" materials; and to dispose of them to private parties for the privilege of repurchasing them for use in the performance of a duty, the whole burden of which falls upon the Government, would be an anomalous proceeding, a measure which would enrich a few at the expense of the people at large. This argument has especial application in this country. The road system of these Islands is at present insufficient to satisfy the necessities of the country, and the Government is committed to a road-building policy. Great efforts are being made to develop an adequate network of highways throughout the length and breadth of the land; the Government has set for itself an enormous task which it is realized must extend over a period of many years and cost many millions. During the progress of this work, road-building materials will be necessary at every point; and the limited financial resources of the Government should not be further depleted by allowing such materials to be sold for a song in the bulk, with the inevitable necessity of immediately repurchasing them at so much per cubic meter. Were such a practice permitted, it would be an easy matter, and no doubt quite attractive in many

instances, for private parties to acquire deposits of gravel and other road materials in strategic locations, with the certain knowledge that in the course of a few years a market for them would automatically result as a consequence of the road-building program of the Government. We do not wish to be understood as saying that deposits of commercial gravel on public lands are exclusively for the use of the Government. It is well known that gravel has at least one other private use of great importance (concrete construction), and in localities where there is enough and to spare for the needs of the Government, it would be eminently proper to dispose of the surplus on reasonable terms. But it would seem to be as eminently proper also for the Government to first reserve sufficient for its own needs in the discharge of an obligation it cannot escape.

Finally, the eminent authority, Lindley on Mines (2d ed.), section 96, formulates the following rule, after a review of the authorities, for the construction and interpretation of the mining laws:

"Where a statute operates as a grant of public property to an individual, or the relinquishment of a public interest, that construction should be adopted which will support the claim of the Government rather than that of the individual."

This is merely an especial application of a general rule in the interpretation of all sorts of public grants of titles and franchises. (See Southerland on Stat. Const., sees. 387 et seq., where the subject is treated in extenso, and *The Coosaw Mining Company vs. South Carolina* (144 U.S., 550, 36 L. ed., 537), where the Federal Supreme Court unequivocally sustains the rule in the interpretation of a mining grant.)

We are of the opinion that commercial gravel is not patentable as a placer mineral claim under the law. So much of the decision of the lower court as continues the appellees in possession of the land situated above the highwater mark of the Moriones River, embraced within their description of location, must be reversed, and the Government restored to the possession of the land. Without costs. So ordered.

Arellano, C. J., Torres and Johnson, JJ., concur.

Moreland, J., concurs in the result.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.