

ALONZO D. COPLEN (DEFENDANT).....APPELLANT;

1899

\*May 21, 22.

AND

\*Oct. 8.

CHARLES CALLAHAN, ADMINISTRATOR OF THE ESTATE OF WILLIAM CALLAHAN, DECEASED (PLANTIFF) } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA.

*Mining claim—Registered description—Error—Certificate of improvements—Adverse action—R. S. B. C. c. 135 s. 28.*

If the description of a mining claim as recorded is so erroneous as to mislead parties locating other claims in the vicinity the error is not cured by a certificate of work done by the first locator on land not included in such description and covered by the subsequent claims.

APPEAL from a decision of the Supreme Court of British Columbia reversing the judgment of Mr. Justice Martin at the trial (1) in favour of the defendant.

The defendant, Coplen, in May, 1892, located the "Cube lode" mineral claim in the Slocan Mining Division of West Kootenay District and on no. 2 post as well as in the description of the claim as recorded the direction of the side line of the claim was given as south-easterly. William Callahan subsequently located the "Cody" and "Joker" fraction claims whereupon the defendant claimed that the "Cube lode" covered a part of the ground on which the "Cody" and "Joker" fractions were located. William Callaghan then brought an "adverse action" under the British Columbia Mining Act, R. S. B. C. ch. 135.

\*PRESENT:—Sir Henry Strong C. J. and Taschereau, Gwynne, Sedgewick and Girouard JJ.

1900  
 COPLEN  
 v.  
 CALLAHAN.  
 —

At the trial the plaintiff's action was dismissed, the trial judge holding that a certificate recorded by Coplen of work done on the ground in dispute made his title thereto perfect under section 28 of said Act which reads as follows :

" 28. Upon any disputes as to the title to any mineral claim no irregularity happening previous to the date of record of the last certificate of work shall affect the title thereto, and it shall be assumed that up to that date the title to such claim was perfect except upon suit by the Attorney-General based upon fraud."

The irregularity in the case was as to the recorded description of the "Cube lode" claim the defendant alleging that the survey was erroneous and the direction of the side line, which was given as south-easterly should have been north-easterly.

The defendant's certificate of works was recorded before Callahan's.

The judgment of the trial judge was reversed by the court *en banc* and judgment ordered to be entered for the plaintiff with costs. The defendant then appealed to the Supreme Court of Canada.

Before the appeal to the court *en banc* the plaintiff William Callahan died and the action was revived in the name of his executor.

*Aylesworth Q.C.* for the appellant.

*Sir Charles Hibbert Tupper Q.C.* for the respondent.

The judgment of the court was delivered by ;

GWYNNE J.—That the description of the "Cube lode" claim as recorded by the appellant does not precisely conform to the provisions of the statute of British Columbia in force in that behalf is not disputed. The evidence indeed leaves no doubt in the matter, and it is in fact admitted. The only question

therefore which, as it appears to me, is at all necessary to be decided in the present appeal is whether the deviation from the prescribed description was calculated to mislead, and did in fact mislead, William Callahan, now deceased, of whose estate the respondent is administrator, when subsequently recording the "Cody" and "Joker" fractions claims located by him on behalf of persons whose title was duly transferred to him in his life time. The "Cody" and "Joker" fractions claims as recorded cover portions of the "Cube lode" claim as claimed now by the appellant, but do not touch the "Cube lode" claim according to the description as recorded. The whole contention of the appellant is that all objection to the defect in his recorded description of the "Cube lode" claim is removed by his certificates of work done by force of sec. 28 of ch. 135, Revised Statutes of British Columbia; but whatever effect that contention might be entitled to in an action between the appellant and the Provincial Government, it has no application here where the contest is solely between the appellant and the respondent, in which the sole question is whether the owner of the "Cody" and "Joker" fractions claims as recorded have not by reason of the error in the "Cube lode" claim as recorded, acquired superior right to the claim of the appellant to so much of the land covered by the records of the "Cody" and "Joker" claims as the appellant asserts claim to as part of the "Cube lode" claim as now claimed by him, although such land is not within the description of the "Cube lode" claim as recorded. That the error in the description of the "Cube lode" claim as recorded was calculated to mislead and that in point of fact, the "Cody" and "Joker" fractions claims were located and recorded as they were by reason of such misleading error, have been found as facts by the learned judge

1900  
 ~~~~~  
 COPLEN  
 v.  
 CALLAHAN.  
 \_\_\_\_\_  
 Gwynne J.  
 \_\_\_\_\_

1900  
COPLEN  
v.  
CALLAHAN.  
Gwynne J.

who tried the case, and such his finding is well supported by the evidence, apart altogether from any question of fraud in any person whomsoever. The appeal, therefore, must be dismissed with costs.

The Chief Justice was prevented by illness from taking part in the judgment.

*Appeal dismissed with costs.*

Solicitors for the Appellant: *Martin & Deacon.*

Solicitors for the respondent: *Tupper, Peters & Gilmour.*

---