

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of La
Rose Mining Company, Limited, v. The
Temiskaming and Northern Ontario Railway
Commission and others, from the Court of
Appeal for Ontario; delivered the 10th
February, 1909.*

Present at the Hearing :

LORD ROBERTSON.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

This is an Appeal from a judgment of the Court of Appeal for Ontario dismissing an appeal from Mabee, J., the Trial Judge, who dismissed the Appellants' action with costs.

The Appellants (Plaintiffs) claim a declaration that they are entitled to the mining rights under that portion of the right of way of the Temiskaming and Northern Ontario Railway which runs across or through a certain mining location, J.S. 14, the property of the Plaintiffs, and claim an injunction restraining the Defendants from dealing or in any way interfering with the ores, mines, and mining rights under the said portion of the right of way. The Plaintiffs claim under one La Rose, who was the person to whom unquestionably the mining location known as J.S. 14 was

originally granted, and the Plaintiff Company is now the registered owner of the said mining location. The Courts below held that the Plaintiffs had failed to prove any title to the mines and rights in question.

The only question, therefore, on this Appeal is: Has the Plaintiff Company proved any title to the mines in question? That depends wholly upon the documents of title and the true construction to be put upon them. The foundation of the matter is the plan and accompanying description of the surveyor (dated the 21st January 1904), upon which the location was originally made. This was followed up, on the 22nd June 1904, by a lease for 10 years to La Rose, which was assigned by him in March 1905 to one Duncan McMartin and others, to whom a Crown Patent was immediately afterwards granted in May of that year, followed by a certificate of ownership on the 4th July, and by mesne assignments the said mining location is now vested in the Plaintiff Company.

The following are the material parts of the description filed with the plan made by the Ontario Surveyor, John Shaw, who mapped out the location. "All and singular that certain
" parcel or tract of land and premises situate
" . . . in the unsurveyed part of the District
" of Nipissing . . . being composed of a
" mining location, designated as Mining Location
" J.S. 14 (containing by admeasurement thirty-
" six acres and ninety-five hundredths of an
" acre more or less)." He then goes on to describe the four boundaries of the plot which he delineates on the plan, and proceeds, "excepting and reserving therefrom the right
" of way of the Temiskaming and Northern

“ Ontario Railway, which right of way may be
 “ more particularly described.” He then gives
 the direction and precise dimensions of the
 right of way, and adds, “said mining location
 “ is shown coloured pink, and said right of way
 “ is shown coloured green on plan of survey by
 “ John H. Shaw, O.L.S., dated 21st January
 “ 1904, of record in the Department of Crown
 “ Lands.”

The words of the lease which annexed the
 plan are practically identical with the description
 filed with the plan :—

“ All that parcel or tract of land situate
 “ being composed of mining location J.S. 14
 “ as shown on plan of survey by Ontario Land
 “ Surveyor, J. H. Shaw, dated 21st January 1904,
 “ of record in the Department of Crown Lands,
 “ a triplicate of which plan is attached to and
 “ forms part of these lease letters, containing by
 “ admeasurement thirty-seven acres more or less,
 “ reserving five per cent. of the acreage hereby
 “ demised for roads and the right to lay out the
 “ same where the Crown or its officers may deem
 “ necessary. Also reserving the right of way of
 “ the Temiskaming and Northern Railway ninety-
 “ nine feet wide, being forty-nine and one-half
 “ feet from each side of the centre line of the said
 “ Temiskaming and Northern Ontario Railway
 “ passing through said Mining Location.”

The words of the Crown Patent are to the
 same effect.

It is admitted that only 37 acres were in fact
 paid for and the rent adjusted on the same
 footing. Thus it appears that not only did
 Mining Location J.S. 14 contain no part of the
 site of the right of way, but that such site was
 carefully excluded from it.

Their Lordships therefore are clearly of
 opinion that the Courts below were perfectly

right in holding that the Plaintiff Company had made out no title to the mines and rights in question, and that the action was properly dismissed, and they will humbly advise His Majesty that the Appeal should be dismissed.

The Appellants will pay to the Respondents one set of costs in respect of their (the Respondents') costs of the Appeal.
