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THE MINING LAWS OF THE PHILIPPINES

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CHAPTER I

INTRODUCTION

In this work we are to treat of an important branch of the law, known as the Mining Law. Before taking up its general discussion, it is convenient to know where it may be found. It is also desirable to give the proper meanings of a few well-selected words and phrases of a technical character which abound in the realm of mining law, as well as to give a very brief review of the former Spanish laws, mainly for purposes of comparison, and in order to get an insight into the present status of old Spanish mining concessions, if any still exist.

A. MINING LAWS NOW IN FORCE. The provisions of the mining law now in force in this jurisdiction are embodied in the Act of Congress of July 1, 1902, as later amended by Sec. 9 of the Act of February 6, 1905; also in Act No. 624, as amended by Acts Nos. 777, 859, 1134 and 1399 of the Philippine Commission; and in Act No. 1128 of the same legislative body. The Act of Congress of July 1, 1902,* is the chief source of our law, inasmuch as the later laws enacted are just a reiteration and amplification of it. The provisions of our Civil Code in Book II, Title IV, Chapter II, as well as the old Spanish special laws on the subject, have been repealed by said Act, although certain provisions of said code may still have force in so far as vested rights in private mining property are concerned.

B. MINING LAW TERMS AND PHRASES. The first of these is what is known as *valuable mineral deposits*. According to Costigan on Mining Law, p. 111, lands are mineral if they contain recognized minerals in such quantities that they are more valuable for mining than for agricultural purposes and the mineral deposits in such lands are valuable if, when taken up first for mining, they have such value that the locator cannot be called irrational in locating and working them, or if, when taken up first for agriculture, they can be mined at a profit.

Mining claim and *location* have now become by usage, especially among miners, to be synonymous. A mining claim, then, is a part of the public mineral domain appropriated in accordance with mining purposes. (Costigan on Mining Law,

* See also the Jones Bill—[Ed.]

p. 142.) It is the act of appropriating a parcel of land which constitutes the claim according to certain established rules, or it is a piece of land including the vein, sufficiently marked on the ground so that its boundaries can be easily traced. (St. Louis Smelting Co. *v.* Kemp, 104 U. S. 636.)

Mineral lands. Lands are mineral if they contain recognized minerals in such quantities that they are more valuable for mining than for agricultural or other purposes (Ah Yew *v.* Choate, 24 Cal. 562; Alford *v.* Barnum, 45 Cal. 482; Davis *v.* Wibbold, 139 U. S. 507, 515; U. S. *v.* Central Pac. R. R. Co., 93 Fed. 871; Deffeback *v.* Hawke, 115 U. S. 392; Colorado C. &. I Co. *v.* U. S., 123 U. S. 307; U. S. *v.* Iron S. M. Co., 128, U. S. 673.)

Mine. The word "mine" is an underground excavation made for the purpose of getting minerals: a pit or excavation in the earth from which metalic ores or other mineral substances are taken by digging (Marvel *v.* Merritt, 116 U. S. 11). "To mine" is defined as to dig or mine, to dig in the earth for minerals. (27 Cyc. 541.)

Mineral. This is a natural body destitute of organization or life (27 Cyc. 532).

In so far as the mining law is concerned, mineral deposits are divided into (1) veins or lodes, and (2) placers.

A *vein* or *lode.* A vein or lode authorized to be located is a seam or fissure in the earth's crust, filled with quartz or some other kind of rock, in place, carrying gold, silver, or other valuable mineral deposits named in the statute. It may be very thin or many feet thick, and it may be rich or poor, provided it contains any of the metals named in the statute. But it must be more than a detached piece of quartz or mere bunches of quartz not in place (Jupiter M. Co. *v.* Bodie Cons. In. Co., 11 Fed. Rep. 666). As used in the Acts of Congress, the term is applicable to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock (Iron Silver M. Co. *v.* Cheesman, 116 U. S. 529).

Placer claim. By the term "placer claim" is meant the ground within defined boundaries which contains minerals in its earth, sand or gravel. It includes valuable deposits not in place, that is, not fixed in rock but in a loose state and may in most cases be collected by washing or amalgamation without milling (U. S. *v.* Iron Silver M. Co., 128 U. S. 673). According to our Mining Law, it means that 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. (Act 624 as amended, Sec. 1; see Costigan on Mining Law, p. 135.)

The apex of a vein. This is the top or the highest point of a vein or lode, and may be at the surface of the ground or at a point below the surface. It is the highest point where it approaches nearest to the surface of the earth and where it is broken on its edge so as to appear to be the beginning of the vein.

Dip, course or *strike.* The "dip" of a vein is the direction of the vein as it goes downward into the earth; the "course" or "strike" is its direction across the country (1 Lindley on Mines, 318).

Mining rights. A mining right is a right to enter upon and occupy land for the purpose of working it either by underground excavation or open workings, to obtain from it the minerals or ores which may be deposited therein (Smith *v.* Cooley, 65 Cal. 46).

C. THE SPANISH MINING LAWS FORMERLY IN FORCE HERE.

1. *The Regalian Doctrine.* The most salient feature of the laws on the subject which were in force during the Spanish domination is what is known as the regalian doctrine. It was based on the Roman law by which the ownership proper of all lands was vested in the State, and that the individual subject could acquire the possessory ownership, with the right to extract minerals, only upon the payment of royalties. Under said doctrine all veins and mineral deposits of gold or silver or of precious stones, according to the Royal Decree of May 14, 1867, Art. 1, belonged, if in public ground, to the sovereign, and were a part of his patrimony; but if in private property, they belonged to the owner of the land, subject to certain conditions imposed by the crown. In any grant of land from the government no right could pass in the precious metals found therein unless expressly made in the grant. This feature of the Spanish law underlay most of the continental systems in Europe at the time. From it we can clearly see the true policy of the Spanish government with respect to the acquisition and retention of numerous colonies. It was the enrichment of the Spanish treasury with gold.

The common law doctrine was far different from it, for under it minerals were the absolute property of the owner of the land, the property on the surface carrying with it the ownership of everything beneath and above it (Del Monte M. Co. *v.* Last Chances M. Co., 171 U. S. 55; Doe *v.* Waterloo M. Co., 54 Fed. 935). At common law, the ownership of the surface was the best prima facie title to the ownership also of the mines until rebutted (Bainbridge on Mines, 5th ed., p. 109). This common law principle has ever since been universally recognized and at present it is the one in force here as well as in the United States and other countries. We shall speak of it later.

2. *Spanish Mining Rights Acquired.* The regalian doctrine provided that mining rights could be acquired by private individuals, subject to the restrictions in force at the time, and could be lost through certain acts of the grantee as specified in the law. But the procedure for their cancellation was, however, different from that followed at present. The procedure for the cancellation of mining concessions had to be conducted before administrative officials, whereas today it has to be done before courts of justice having jurisdiction over same (Sec. 62 of the Philippine Bill). Granting that such concessions have been validly acquired and held, a question arises as to whether under our present mining laws they could be

assailed, lost or invalidated. The Treaty of Paris as well as the Act of Congress of July 1, 1902, have made specific provisions regarding them. Sec. 60 of said Act provides:

> "That nothing in this Act shall be construed to affect the rights of any person, partnership, or corporation having valid, perfected mining concessions granted prior to April eleventh, eighteen hundred and ninety-nine, but all such concessions shall be conducted under the provisions of the law in force at the time they were granted, subject at all times to cancellation by reason of illegality in the procedure by which they were obtained, or for failure to comply with the conditions prescribed as requisite to their retention in the laws under which they were granted: *Provided*, That the owner or owners of every such concession shall cause the corners made by its boundaries to be distinctly marked with permanent monuments within six months after this Act has been promulgated in the Philippine Islands, and that any concession the boundaries of which are not so marked within this period shall be free and open to explorations and purchase under the provisions of this Act".

From this provision of law, we can see that such of the old Spanish mining concessions as were validly acquired during the former regime are amply protected by Congress, subject only to the conditions therein exposed. A good illustration of this protection may be found in the C. Casanovas case, decided by our Supreme Court. This court held that Sec. 134 of the Internal Revenue Law of 1904 (Act No. 1189) is void, because it impairs the obligation of contracts contained in the concessions of mines made by the Spanish Government, and that it is in conflict with the Act of Congress of July 1, 1902, Sec. 60 (Casanovas *v.* Hord, 8 Phil. 125).

CHAPTER II

PROPERTY IN MINERALS

A. BY PRIVATE INDIVIDUALS. 1. *Where There Has Been no Division Between the Ownership of the Surface and the Mineral Estate.*

(a) *In Minerals Which Are in Place.* The common law maxim, "Cujus est solum ejus est usque," has its full force and effect here. According to it, the owner of the soil has the property in all the minerals lying underneath and between planes passing through the centre of the earth and the boundaries of the surface. It follows, therefore, that all the minerals in place, undisturbed in their position, where they have been deposited by the agencies of nature, are a part of the land, and as such belong to the owner of the soil, who can dispose of them in the manner he pleases. He may either extract them himself or have some one else do the work for the benefit of either or of both. This is an example of pure ownership. That same principle is followed under the civil law. Our Civil Code, in Art. 350, provides that the owner of land is also the owner of its surface and of what is under it. Hence he may establish thereon any work or excavation which he deems necessary in order to obtain profit out of the minerals found thereunder, subject only to the rule that he must

not injure the rights of his neighbor. The Code Napoleon sustains the same view and gives the holder of the land the same rights of enjoyment and disposal, it being also based on the Roman Law. Hence prima facie the owner of freehold lands is entitled to all the minerals found therein, not as a separate estate, but as a part of the fee and inheritance, and the same may be transmitted by descent or by conveyance without special designation.

(b) *In Minerals Separated from the Freehold.* But on the other hand if the minerals have already been severed from the freehold by any artificial means and not as a result of natural agencies, they then become personalty and therefore are subject to the rules regarding the ownership of personal property; that is, they can be carried from one place to another and are susceptible of appropriation (Civil Code, Art. 335). The person who has extracted them from the soil—and that may either be the owner or a mere possessor, or an outsider having the proper authority to work them out—has the absolute right of their disposal. The title to the mineral land may remain in the government, but once the ores have been dug or detached from it under a valid mining claim, they then become free from any lien, claim, or title, and, becoming personal property, their ownership is vested in the man whose labor, capital, and skill have discovered and extracted them from the soil. (Forbes *v.* Gracy, 94 U. S. 762.)

(c) *In Minerals Where Ownership of the Soil is Limited.* In the case of owners of the soil who have a limited estate or whose ownership thereof is restricted, like tenants for life or for a certain number of years, their property in the minerals found therein depends upon the provisions of the contract under which they derive title. The contract may provide that the tenant may work mines of all sorts which were already opened before the commencement of the tenancy or lease and obtain the benefit therefrom, or he may open new ones with a like end, or may wholly prohibit him from doing any kind of work regarding the same. So that the case depends entirely upon the agreement of the parties concerned. In all respects he must, however, use the property leased as a diligent father of a family would under the circumstances, applying the same to the use or uses previously agreed upon. And in case there is no agreement, the use of the same for mining purposes may be inferred from the nature of the property leased in accordance with the customs of the land or the use to which it was originally devoted (Civil Code, Art. 1555). The same things are true in any other form of limited ownership.

(d) *In Minerals of Soil of Joint Ownership.* Where there is joint ownership of the land containing minerals, the right as to these is limited to the just share of each of the owners according to stipulations made among them. This does not mean, however, that each may mine until he has taken out his share of all the minerals in the land, for this is necessarily unascertainable. He is entitled only to his share of what is actually taken out. It makes no difference that the minerals are practically inexhaustible. Of all that he mines, he is accountable to his co-tenants or co-owners for their shares, and in case of failure to account he is responsible to each and every

one of the others for the value in place of their shares. As to other rules regarding community of property in minerals, see Arts. 392-395, and 397-406, of the Civil Code, which are also applicable.

2. *Where there Has Been a Division.* Although minerals undisturbed, or in place, are a part of the freehold, and as such usually belong to the owner of the soil, they are capable of separate ownership and distinct possession. When there is such a separation, the minerals are real estate constituting a separate corporeal hereditament, capable of distinct inheritance and conveyance. The grant of the permanent or absolute interest in the minerals effects such a severance and is equivalent to a conveyance in fee of the estate in the minerals separate from that of the owner of the soil. This is the first class of ownership of mineral estate. The second is where the owner of the land grants somebody else a license to mine it, that is, the right to take the minerals. In such a case the mineral interest is distinct from the ownership of the land. It is an incorporeal right whereby the grantee gets his title to the minerals the moment they are extracted from the soil. The contracts creating all such rights are indiscriminately called mining leases and are generally governed by the provisions of our Civil Code regarding contracts of lease of real property and by provisions relating to other kinds of contracts where realties are involved.

B. BY THE STATE. 1. *Where Minerals are Found in Public Lands.* There is no doubt that the government of the Philippine Islands is the sole owner, by virtue of its sovereignty, of all the public lands together with the minerals found therein, save only those of them that have been expressly reserved by the United States for military and other purposes. In Sec. 12 of the Philippine Bill, it is provided:

> "That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December 10, 1898, except such land or other property as shall be designated by the President of the United States for military and other reservations are hereby placed under the control of the government of said islands to be administered for the benefit of the inhabitants thereof, except as provided in this Act."

Thus we can see that the word "property" includes mineral lands, and consequently is subject to the free disposal of said government. They are the property of the State and this alone has the absolute right to authorize their working and to make such rules and regulations as are necessary and proper therefor and not in conflict with the fundamental laws (Loeweinstein *v.* Page, 16 Phil. Rep. 126; Secs. 57 and 36 of the Philippine Bill as amended). They are held in trust by the government for the benefit of the people named in said Act and can only be acquired in accordance with its provisions (Secs. 20 and 61 of the Phil. Bill). Sec. 21 of the Act of July 1, 1902 provides:

> "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 by citizens of the United States or of said Islands."

This is a very clear provision as regards the policy of the government. By it all mineral lands are thrown wide open to all those desiring to make use of them, including those who have declared their intention to become citizens. So long as they comply with the procedure laid down in the law, this liberal policy, far different from that of Spain, is extended to them.

2. *When Minerals Are Found Elsewhere.* (a) *In Beds of Navigable Streams.*— The beds of navigable rivers being the property of the State, it follows that all the minerals therein found belong also to the same. Under authority given by it, private individuals may, however, make use of them. So that as against the government, one who appropriates them without a grant from the former becomes a tresspasser and consequently can be enjoined from taking them or be compelled to respond in damages. (See Law of Waters of 1866.) If there is a grant, the title to the soil or the minerals under navigable rivers passes to the grantee. That is the general rule, as in most jurisdictions it has been held that the soil and the sand deposited there by the currents remain to be the property of the State notwithstanding the license to dig and mine for iron, coal, and other minerals (Brandt *v.* McKeever, 18 Penn. 70).

(b) *In Public Highways.* The common as well as the civil law rules recognize the ownership by the State, province or municipality of the minerals found in public highways. But if the public have had only the right of passage, and the land subject to this belongs to an adjoining owner, the property to the minerals is in this adjoining owner, subject only to the obligation not to interfere with the right of the public. This is also applicable to private ways. The owner of the right of way has no property in the soil or the minerals therein found in that these belong exclusively to the owner of the servient tenement, subject only to the obligation of surface support of the road. The gift of the right of way is not a gift of the earth and the minerals which may exist within the boundary lines.

(c) *In Lands Taken by the Right of Eminent Domain.* As to minerals found in the lands taken by the right of eminent domain by a political subdivision, person or private corporation, unless there is an express agreement in the conveyance reserving the ownership to the said minerals in the original owner same shall become the property of the grantee, and can be disposed of as previously mentioned. This is the civil law rule and is the one here in force. The common law rule is different, inasmuch as whoever exercises the right of eminent domain does not acquire the ownership of the minerals found under the soil. The same remains in the owner of the land appropriated for the public use. The grant of a right of way to a railroad company being the grant only of an easement, the owner of the fee remains the owner of springs, streams, and minerals. He may not interfere with the free use of the right of way, but subject to this use he may make all lawful use of the land (Smith *v.* Holloway, 124 Indiana 329).

CHAPTER III

GRANT OF THE GOVERNMENT'S TITLE

A. WHAT LAND MAY BE GRANTED. Before taking up the different steps necessary in making a valid location, brief reference should be made to the mineral laws of the paramount authority in order to ascertain the class of land that may be conveyed by it to private individuals. Sec. 21 of the Act of Congress of July 1, 1902, provides:

> "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, etc."

From this we can clearly see that only valuable public mineral lands can be conveyed by the government for mining purposes in accordance with the procedure laid down by it. As to what are valuable mineral deposits this has already been considered in a previous chapter. The true test for ascertaining the real nature of the land in question which usually arises whenever there is a contest between one claiming under a mineral location and another claiming under a different entry, is to find out whether upon the whole the land appears to be better adapted to mining or other purposes. Such is the true criterion (Pacific Coast Marble Co. *v.* Northern Pac. R. Co., 25 L. D. 233). The land being found to be mineral, it is therefore open to location as a mining claim.

B. WHO MAY LOCATE A MINING CLAIM. According to the laws of the United States, citizens thereof and even foreigners can locate a mining claim. In the latter case the mining claim may afterwards be validated only by the naturalization of the foreigner or by his rendering naval or military service for a certain number of years. There the question of want of citizenship of a locator can only be raised by the United States, never by private parties (Lone Jack Min. Co. *v.* Megguison, 82 Fed. 89). So that citizenship there is not a condition of location, as an alien may locate and hold a mining claim so long as he does not seek a patent, subject only to an action by the government. In the case of corporations claiming either as locators or applicants for patents, the citizenship of the stockholders is not subject to inquiry, as all these are conclusively presumed to be citizens (Rev. St. 2321; 1 Fed. 522). Here in the Philippine Islands, as has already been stated, mining claims can only be located by citizens of the United States or of the Islands (Sec. 21 of the Act of Congress of July 1, 1902). Hence a location made by an alien resident here is void, although it may be validated afterwards by naturalizing himself in the United States. The question of citizenship, unlike the rule in the latter country, can be raised here by private parties no matter whether it be that of a corporation. There is no presumption here. All must undergo the trial of the law.

In connection with this point, it is important to know who are citizens of the Philippine Islands. Citizens of these Islands are the native born persons thereof

who, according to the Treaty of Paris, also include all those who were Spanish subjects at the time the said treaty went into effect and those who have been born here ever since. Children born of foreign parents whose citizenship was specifically reserved are excluded. Spanish subjects who, according to said treaty, did not declare their intention of preserving their allegiance to the Spanish Crown, are considered also as citizens and as such are entitled to enjoy mining rights.

The word "citizens" no doubt includes corporations. Hence corporations whether created under the laws of the United States of any state or territory thereof, or of the Philippines, can locate mining claims as well. But can a corporation organized in the Philippine Islands, wholly composed of foreigners but resident thereof, make valid location. We shall answer this question hereafter in another chapter.

Minors, women, and agents can also locate mining claims inasmuch as the statute does not make any distinction as to age, sex or capacity. Agents, therefore, can make valid locations in behalf of their principals, irrespective as to whether they are citizens of the Philippine Islands, of the United States, or not. Any recognition by the principal of the agent's acts is a ratification, and they beome thereby as his own. The authority of the agent need not be in writing; an oral authorization is enough. Thus, where one person on behalf of another locates and records a claim in his own name, the court will compel him to transfer the claim to his principal. Agents of corporations or partnerships likewise can make valid locations for the latter. In the case of abandonment the same rules of agency would apply.

C. DIFFERENT KINDS OF CLAIM. There are two pincipal kinds of claim upon which mining rights may be exercised. For the purpose of our study, they are the lode and placer claims. There are also other classes of minor claims, taken by the miner in connection with the development and exploitation of ish principal claim. These are the tunnel, mill site, and water right claims.

1. *Lode or Mineral Claim.* According to our mining law, this is a mining claim upon veins or lodes of quartz or other rock in place, bearing gold, silver, cinabar, lead, copper, or other valuable deposits, or a mining location on any mineral vein, lode, or ledge situated on the public domain. The primary requisite, therefore, is that it be upon a lode or vein or mineral-bearing rock (Eureka onC. Mni. Co. *v.* Richmond M. Co. of Nebraska, 103 U. S. 839; 27 Cyc. 535). It is a claim upon a body of mineral-bearing rock lying within walls of neighboring rock, usually of different kind, but sometimes of the same, and extending longitudinally between those walls in a continuous zone or belt.

2. *Placer Claim.* This has already been explained in Chapter I, B. See 27 Cyc. 535.

3. *Tunnel Claim.* This is a claim which is taken either for the development of a vein or lode, or for the discovery of mines. Our mining laws have little to say about this kind of claim, but Sec. 2323 of the Rev. Stats. of the United States provides that, according to the American law, the tunnel owner becomes entitled only to the

veins or lodes discovered by him in the tunnel itself within three thousand feet of its face and on the line thereof. Notwithstanding this, we believe that according to the law of this jurisdiction, this is not a separate claim, as for example, a lode claim. It forms a necessary part of the works arising therefrom. The owner of a lode claim can run a tunnel to work up his claim, without the necessity of locating it. Any other claim for the proper location of which a tunnel is necessary, carries with it the right to make the latter. Locating it is not required by law.

4. *Mill Site Claim.* Sec. 48 of the Act of Congress of July 1, 1902, has a very clear and definite provision regarding this kind of claim. It provides thus:

> "That where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins; but no location of such non-adjacent land shall exceed two hectares, and payment for the same must be made at the same rate as fixed by this Act for the superficies of the lode. The owner of a quartz mill or reduction works not owning a mine in connection therewith may also receive a patent for his mill site as provided in this section."

From the provision of law just cited, it appears that there are two classes of mill sites that may be patented. First, those mill sites appurtenant to lode claims, and, second, those that are entirely independent of any mine. As the law provides, the proprietor of the lode claim can include in his application for patent the non-adjacent non-mineral land near it, valuable for milling or mining purposes, and the same may be patented subject to the restrictions therein imposed. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may likewise obtain a patent therefor. The law of the United States regarding the latter class of mill site claims is just the same as ours. (See Sec. 2327 of the Rev. Stats. of the U. S.)

5. *Water Right Claim.* In connection with the development of mines, rights to the exclusive use of water may also be acquired. The rules controlling rights over this kind of claim are fully stated and discussed in the Law of Waters of 1866, which is the one in force here. (See Law of Waters of 1866; also Secs. 49 and 50 of the Philippine Bill.)

CHAPTER IV

DISCOVERY AND LOCATION OF CLAIMS

A. DISCOVERY IN GENERAL. Discovery may be defined as the acquirement of knowledge that such lode or other mineral exists within the limits of the claim sought to be located (Waterloo Min. Co. *v.* Doe, 56 Fed. 685). It has a close relation to location in that it constitutes a first step in making the former valid, although sometimes it follows said location. To render location valid in the latter case, the discovery must be made prior to any intervening rights (Nevada Sierra

Oil Co. *v.* Home Oil Co., 98 Fed. 673; Olive Land Co. *v.* Olmstead, 103 Fed. 568). The time of making the discovery in relation to the other acts of location is immaterial, but no location is complete until the discovery is made (Creede, etc., Min., etc., Co. *v.* Uinta Tunnel Min., etc., Co., 196 U. S. 337). The locator need not be the first discoverer. The discovery must be made of minerals found in unappropriated lands of the government, so that if it is made within the boundaries of lands to which other individuals have already the title, or other lands in which location has been made, it will avail nothing. It is otherwise, however, if the location or title is not a valid one (Belk *v.* Meagher, 104, U. S. 279.)

1. *Discovery of Lodes.* This is the finding of a vein or lode which may be located. Hence if a locator has found rock in place, containing mineral, he has made a discovery within the meaning of the law, and this fact warrants him in making a location of a mining claim (Book *v.* Justice Mni. Co., 58 Fed. 106). It is not necessary that the locator be the original discoverer, but simply that he find the vein or lode in an unappropriated land. Noting and claiming a vein or lode discovered by another who has abandoned or forfeited it, and adopting the discovery as one's own, is making a discovery (Hayes *v.* Lavaquino, 17 Utah 185). But there can be no location on a discovery within the limits of an existing valid location (Givillim *v.* Donnellan, 115 U. S. 45). The question as to whether a vein or lode has actually been discovered is entirely within the power of the court to decide, inasmuch as it is one of fact. Sec. 28 and Sec. 29 as amended, of the Philippine Bill, provide that the mineral must be found in place, so that the size or richness of a vein or lode discovered is not material to the validity of a location. As Mr. Lindley says in his work on mines, it is enough if the prospector has discovered such indications of mineral that he is willing to spend his money and labor thereon in order to find ore; for to hold otherwise would produce unjust results, in that it would prohibit a miner from making any valid loation until he has fully shown the existence of ore of mineral value. Hence any genuine discovery is sufficient.

2. *Discovery of Placers.* In case of placers, discovery is just as essential as it is in lode locations (Nevada Sierra Oil Co. *v.* Miller, 97 Fed. 681; Nevada Sierra Oil Co. *v.* Home Oil Co., 98 Fed. 673). In the latter case the principles announced apply with equal force to placers, so far as the character of the deposits will admit. In respect to placer claims the Supreme Court of the United States in deciding the Nevada case above cited held that if a competent locator actually finds upon unappropriated public land petroleum or other mineral in or upon the ground, and so situated as to constitute a part of it, it is a sufficient discovery, within the meaning of the law, to justify a valid location, without waiting to ascertain by exploration whether the ground contains the mineral in sufficient quantities to pay. Hence, as in the case of lodes, genuine discovery is all that is required, and this is a question of fact to be determined by the court. As in lode claims, discovery may also follow location. A prior discovery is protected. In a controversy between two claimants

priority of discovery determines their rights, but to justify said discovery it must appear that the soil is valuable for placer mining (Christman *v.* Miller, 197 U. S. 313). It is now well settled that one discovery within the limits of an association location is sufficient Ferrell *v.* Hoge, 27 L. D. 129; Reins *v.* Raunheim, 28 L. D. 526). The land department of the United States, nevertheless, while recognizing this rule, takes the position that a single discovery within a placer location does not conclusively establish the mineral character of all the land within it, and that this question is open to investigation by it. There is no inference that because a part of a certain tract of land is mineral the other parts are also of the same character (Ferrell *v.* Hoge, 29 L. D. 129; Davis *v.* Weibold, 139 U. S. 507; Dughi *v.* Harkins, 2 L. D. 721). If an association of placer locators, having located without discovery one hundred and sixty acres, convey the entire title to one of them or to a stranger, and the latter, while holding the entire title, subsequently makes a discovery, does this discovery entitle him to hold the whole one hundred and sixty acres or is such a conveyance valid? According to the majority opinion of the court in a decision rendered the Supreme Court of California, in the case of Miller *v.* Christman, held that such a conveyance by the associates to one of them was valid. The United States Supreme Court affirmed this decision and held the same view (Christman *v.* Miller, 197 U. S. 313; see Weed *v.* Snook, 144 Call. 439).

B. LOCATION IN GENERAL. A discovery having been made, the ground is open to location as a mining claim, that is, in the language of the law, to occupation under the rules and regulations prescribed by it. Location, as already defined, is the act or series of acts by which the right to exclusive possession of minerals and the surface of mineral land is vested in the locator (Costigan on Mining Law, p. 175; Creede & Cripple Creek M. & M. Co. *v.* Uinta M. T. Co., 196 U. S. 337). Generally, the various requisites needed in the acquisition of a valid location are (1) the discovery of mineral within the claim sought to be located; (2) that such discovery must be made upon an unappropriated public land; (3) that the locator must either be a citizen of the United States or of the Philippine Islands; (4) the claim's size and shape must conform to those prescribed by the statute; (5) the location must be distinctly marked on the ground; (6) if the record of the location is required by law, it must be made in accordance therewith; (7) all local rules and other regulations in force must be complied with. As to the time within which the locator is allowed by the law to complete his acts of location, there is no specific provision of our law here, although in some parts of the United States there is. This being the case, we believe that a reasonable time is allowed the locator, and what this means depends entirely upon the circumstances of each particular case. Of course, the locator must not sleep in his rights, but must proceed with diligence to develop his property. (See Secs. 46, 47 and 52 of the Philippine Bill; Sec. 2 of Act 624 of the Philippine Commission.)

1. *Location of Lode Claims.* In the previous paragraph we considered location in general. We are now to treat here of lode location. Sections 22 to 27,

30 and 33 of the Philippine Bill, and Sec. 8 of Act 624 of the Philippine Commission, govern and described clearly all the different acts and requirements necessary to make it valid. Said sections are the following:

"SEC. 22. (As amended by act of Congress approved February 6, 1905). That mining claims upon land containing veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other deposits located after the passage of this Act whether located by one or more persons qualified to locate the same under the preceding section shall be located in the following conditions: Any person so qualified desiring to locate a mineral claim shall, subject to the provisions of this Act with respect to land which may be used for mining, enter upon the same and locate a plat of ground measuring, where possible, but not exceeding three hundred meters in length by three hundred meters in breadth, in as nearly as possible a rectangular form—that is to say, all angles shall be right angles, except in cases where a boundary line of a previously surveyed claim is adopted as common to both claims, but the lines need not necessarily be meridional. In defining the size of a mineral claim it shall be measured horizontally, irrespective of inequalities of the surface of the ground."

"SEC. 23. (As amended by Act of Congress approved February 6, 1905). That a mineral claim shall be marked by two posts, placed as nearly as possible on the line of the ledge or vein, and the posts shall be numbered one and two, and the distance between posts numbered one and two shall not exceed three hundred meters. The line between posts numbered one and two to be known as the location line; and upon posts numbered one and two shall be written the name given to the mineral claim, the name of the locator, and the date of the location. Upon post numbered one there shall be written, in addition to the foregoing, "Initial post," approximate compass bearing of post numbered two, and a statement of the number of meters lying to the right and to the left of the line from post numbered one to post numbered two, thus "Initial post." Direction of post numbered two.....meters of this claim lie on the right and.....meters on the left of the line from number one to number two post." All the particulars required to be put on number one and number two posts shall be furnished by the locator to the provincial secretary, or such other officer as by the Philippine Government may be described as mining recorder, in writing, at the time the claim is recorded, and shall form a part of the record of such claim."

"SEC. 24. (As amended by act of Congress approved February 6, 1905). That when a claim has been located the holder shall immediately mark the line between posts numbered one and two so that it can be distinctly seen. The locator shall also place a post at the point where he has found minerals in place, on which shall be written 'Discovery post:' Provided, That when the claim is surveyed the surveyor shall be guided by the records of the claim, the sketch plan on the back of the declaration made by the owner when the claim was recorded, posts numbered one and two, and the notice on number one, the initial post."

"SEC. 25. (As amended by act of Congress approved February 6, 1905). That it shall not be lawful to move number one post, but number

two post may be moved by the deputy mineral surveyor when the distance between posts numbered one and two exceeds three hundred meters, in order to place number two post three hundred meters from number one post on the line of location. When the distance between posts numbered one and two is less than three hundred meters, the deputy mineral surveyor shall have no authority to extend the claim beyond number two."

"SEC. 26. That the 'location line' shall govern the direction of one side of the claim, upon which the survey shall be extended according to this Act."

"SEC. 27. That the holder of a mineral claim shall be entitled to all minerals which may lie within his claim, but he shall not be entitled to mine outside boundary lines of his claim continued vertically downward: Provided, That this Act shall not prejudice the rights of claim owners nor claim holders whose claims have been located under existing laws prior to this Act."

"SEC. 30. That in cases where from the nature or shape of the ground, it is impossible to mark the location line of the claim as provided by this Act then the claim may be marked by placing posts as nearly as possible to the location line, and noting the distance and direction, which shall be set out in the record of the claim."

"SEC. 33. That no holder shall be entitled to hold in his, its, or their own name or in the name of any other person, corporation, or association more than one mineral claim on the same vein or lode."

(Act 624.)

"SEC. 8. In addition to the requirements of sections twenty-three and twenty-four of the Act of Congress approved July first, nineteen hundred and two, in regard to placing posts numbers one and two on the line of location, and marking the line between them, each locator of a mineral claim shall establish each of the four corners of the claim by marking a standing tree or rock in place, or by setting in the ground, where practicable, a post or stone. Each corner shall be distinctly marked to indicate that it is the northeast, southeast, southwest, or other corner, as the case may be, of the claim in question; and the posts or stones used to mark such corners shall be of the dimensions required by these regulations for posts and stones marking corners or angles of a placer claim."

(a) *Requisites of Claim.* (1) *Nature of Land to be Located.* The first part of Sec. 22, as amended, of the Act of Congress of July 1, 1902, expressly specifies the kind of land that may be located under this claim. The land must be mineral, containing valuable deposits of gold, silver, cinnabar, lead, etc. It follows, therefore, that any land containing any substance, metallic or non-metallic, which possesses economic value, if such substance exists therein in veins or lodes of "rock in place" in sufficient quantities to render the land more valuable for the purpose of removing and marketing the product than for any other purpose, such land must be appropriated under the laws applicable to lodes.

(2) *Size, Shape and Number.* Sec. 22 of the same Act provides that each claim shall not exceed three hundred meters in length by three hundred meters in breadth, in as nearly as possible a rectangular form. So that a full size claim must be a square three hundred by three hundred meters, containing an area of nine hectares. In defining the size of a mineral claim, the law says that it shall be measured horizontally, irrespective of inequalities of the surface of the ground. This provision refers only to the superficial area and not to the depth. Under the provisions of Sec. 27, the owner of a lode claim can mine it downward indefinitely. The object of this provision is, we believe, to prevent dispute between adjoining owners. The rule in the United States regarding this point is somewhat different, inasmuch as the locator there can mine under the claim of another, while following the vein underneath. According to Sec. 33 of the same Act above cited, no holder shall be entitled to hold more than one mineral claim on the same vein or lode in its, his, or their name, irrespective as to whether it be a corporation, association, or not. This provision of law is, we think, not wise, because it gives no encouragement to persons desiring to locate, who are financially fitted to pursue the work to its finish, and because it limits or restricts the production or supply of valuable minerals that are greatly needed by the commercial and industrial community.

b. *Procedural Requirements to a Valid Location.* The sections above cited are very clear regarding the necessary acts to be pursued in acquiring a valid location. The first step has already been discussed in a previous paragraph, and the last shall be treated of more fully hereafter. The thing that should be borne in mind carefully from the above provisions is the monumenting of the claim. The locator of a mineral claim has to do the additional work of marking each corner of the lode by some permanent object, such as tree, stone or post, on which shall be inscribed the description of the corner with reference to the points of the compass. The post or stone used to mark the corner must be of the same dimensions as those required by the same Act for marking the corners of placer claims, which we shall take up later. We thus find that the requisites of a valid lode location under our law are (1) the discovery; (2) the posting of notices; (3) the discovery post or shaft; (4) marking the location on the ground; (5) the making of certificate; and (6) recording.

2. *Location of Placers.* The rules governing this kind of location are found in Secs. 41-44 of the Act of Congress of July 1, 1902, and in Secs. 9-12 of Act 624 of the Philippine Commission. These sections are the following:

> "SEC. 41. 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."
>
> "SEC. 42. That any person authorized to enter lands under this Act may enter and obtain patent to lands containing petroleum or other mineral oils and chiefly valuable therefor under the provisions of this Act relative to placer mineral claims."

"SEC. 43. That no location of a placer claim shall exceed sixty-four hectares for any association of persons, irrespective of the number of persons composing such association, and no such location shall include more than eight hectares for an individual claimant. Such locations shall conform to the laws of the United States Philippine Commission, or its successors, with reference to public surveys, and nothing in this section contained shall defeat or impair any bona fide ownership of land for agricultural purposes or authorize the sale of the improvements of any bona fide settler to any purchaser."

"SEC. 44. That where placer claims are located upon surveyed lands and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining located after the date of passage of this Act shall conform as nearly as practicable to the Philippine system of public-land surveys and the regular subdivisions of such surveys; but where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral lands in any legal subdivision a quantity of agricultural land less than sixteen hectares shall remain, such fractional portion of agricultural land may be entered by any party qualified by law for homestead purposes."

(Act 624.)

"SEC. 9. The locator of a placer claim shall post upon the same a notice containing the name of the claim, designating it as a placer claim, the name of each locator, the date of the location, and the number of hectares claimed. He shall also define the boundaries of the claim by marking a standing tree or rock in place, or by setting a post or stone at each corner or angle of the claim. When a post is used it must be at least five inches in diameter or four inches on each side by four feet six inches in length, and, where practicable, set one foot in the ground and surrounded by a mound of earth or stone four feet in diameter by two feet in height. When a stone, not a rock in place, is used, it must be not less than six inches on each side by two and one-half feet in length, and must be set so as to project half its length above the ground. Where a stone, a rock in place, is used, a cross must be cut in the stone, the arms of which cross must be at least four inches long, intersecting, approximately, at right angles and in their centers, the cutting to be at least one-half inch deep. The intersection of the arms shall constitute the corner. Each tree, rock in place, stake, or stone used to designate a corner or angle of a placer claim must be so marked as to clearly indicate its purpose, and the objects selected to designate the corners of a claim shall be marked with a series of consecutive numbers, thus: "Cor. No. 1," "Cor. No. 2," "Cor. No. 3," and so forth: Provided, That nothing in this section shall be understood to require the establishment and marking of any corner or angle of a placer claim located upon surveyed public lands at a point where a corner of the Philippine system of public-land surveys has previously been established, in which case it shall suffice in describing said claim for record to correctly describe said corner of the public surveys, and to state that such corner stands for corner number one, corner number two, or corner number three, and so forth, as the case may be, of such placer claim."

"SEC. 10. Within thirty days after the location thereof every locator of a placer claim shall record the same with the mining recorder of the province or district in which the claim is situate."

"SEC. 11. The record of a placer claim shall consist of a declaration of location reciting all the facts necessary to a perfect identification of the claim, and shall contain a true copy of the notice posted thereon at the date of location, as well as a description of the claim as staked and monumented, showing the length and approximate compass bearing, as near as may be of each side or course thereof, and stating in what manner the respective corners are marked, whether by a standing tree, rock in place, post, or stone, and giving in detail the distinguishing marks that are written or cut on each, and also stating as accurately as possible, preferably by course and distance, the position of the claim with reference to some prominent natural object or permanent monument."

"SEC. 12. No placer claim shall be recorded unless the declaration of location be accompanied by an affidavit made by the applicant or some persons on his behalf cognizant of the facts, that the notice required by section nine of these regulations has been posted upon the claim, and that the ground thereby embraced is valuable for placer mining purposes; that the ground applied for is unoccupied by any other person."

(a) *Requisites of Claim.* (1) *Nature of the Land to be Located.* In conformity with the above rules, land of the public domain may be entered when it is shown to have upon or within it such a substance as falls within the classification mentioned in Sec. 1 of Act 624 of the Philippine Commission, and if such substance is found in the form of superficial or other deposits not in place. Thus if a discovered deposit satisfies the law as to its mineral character, and it is not found in veins of quartz, or other rock in place, it may be appropriated under the laws applicable to placers. But commercial gravel is not susceptible of location under the mining laws, it not being either a mineral or a building stone under the previous definition (XI Off. Gaz. 1379).

(2) *Size, Shape, and Number.* The most important provision of the law with respect to placer claim locations is found in Sec. 43 above cited. It provides that no location of this kind of claim shall exceed sixty-four hectares for an association of persons, etc. At first sight, this provision of law is somewhat ambiguous, but a careful study of it will result in solving the difficulty. It simply means that two or more persons, irrespective of their number, may associate together for the purpose of locating one or more placer claims, in such a way that eight hectares of land may be included in any claim for each individual represented, and not more than that number; but under no circumstances shall the whole area included in a single claim exceed sixty-four hectares. As to the number of claims that may be located and the shape of each, the law makes no specific limitations. Consequently, it must be understood that any number in any shape may be located. Here, far different from the former class of claims, an individual or association of persons can locate as many

adjacent claims as he or it may like, provided that the annual assessment work is performed, and there is compliance with all the laws enacted by the government concerning them.

(b) *Procedural Requirements to a Valid Location.* It is unnecessary here to repeat the provisions of law regarding the different steps or acts to be performed leading to the acquisition of a valid placer location. The provisions of law above cited are self-explanatory. However, in order to leave a clear impression upon the mind, a summary of them is not out of place. The different acts for making the location valid are (1) the discovery; (2) the posting of notice or notices of location; (3) marking the boundaries in a specified manner; and (4) the recording of the certificate of location.

3. *Location of Lodes Within Placers.* Sometimes within the boundaries of placer claims lodes may be discovered. In such a case they may be held by the same or different persons (Reynolds *v.* Iron S. M. Co., 116 U. S. 687; Aurora Lode *v.* Bulger Hill Placer, 23 L. D. 95). Such lodes whose existence is known prior to the application for placer patent, are not the subject of a placer grant (Reynolds *v.* Iron S. M. Co., 116 U. S. 687; Iron S. M. Co. *v.* Mike & Starr M. Co., 143 U. S. 394; Dahl *v.* Raunheim, 132 U. S. 260). We can thus see the limitations imposed upon the ownership of a placer claimant, who, unlike that of lodes, may not own everything either upon or under the surface of his claim. As already said, the placer claimant may, in the absence of a discovery and location by others, obtain the title to the lode; but he has not such right by virtue of his prior placer appropriation, unless the existence of the lode remains unknown until the application for a placer patent is filed (Aurora Lode *v.* Bulger Hill Placer, 23 L. D. 95). There is no reason why a placer claimant may not locate a lode claim within his unpatented placer claim, or consent that others may do so (Clipper M. Co. *v.* Eli M. & L. Co., 194 U. S. 220). The failure to include a lode known to exist prior to the patent application for placer is a conclusive declaration that the placer applicant has no right to it (Noyes *v.* Mantle, 127 U. S. 384; Iron S. M. Co. *v.* Mike & Starr G. & S. M. Co., 143 U. S. 394). It may therefore be located by others. With regard to the manner of locating lodes within placers, there is no difference between it and that of any other found within the public domain. It must be discovered and developed, the location must be marked upon the surface, and all the other formalities required as in the case of lodes situated elsewhere must be complied with. (See Costigan on Mining Law, p. 260-1.)

CHAPTER V

RECORDING OF LOCATION CERTIFICATE

As already stated, recording is the last act needed in order to make a valid location. Such being the case, it is important in that the failure to perform it renders the location invalid and will subject the claim to another location. Besides this, the record itself is a strong evidence of the claim thus perfected. Its real purpose is to operate as a constructive notice of the fact of an asserted claim and its extent

(Meydenbauer *v.* Stevens, 78 Fed. 787). When the locator's right is challenged, he should be compelled to establish by proof outside of the certificate all the essential facts, without the existence of which the certificate possesses no potential validity (Uinta T. M. Co. *v.* Ajax G. M. Co., 141 Fed. 563; Creede & Cripple Creek M. & M. Co. *v.* Uinta T. M. & T. Co., 196 U. S. 337). These facts once proven, the recorded certificate may be considered as prima facie evidence of such other facts as are required to be stated therein, which is, of course subject to contradiction (Porter *v.* Tonopah North Star T. & D. Co., 133 Fed. 756; Zerrer *v.* Vanina, 134 Fed. 610.)

A. PROCEDURE. *1. In Lode Claims.* Under this class of claims, the last step to be performed in perfecting it is recording. The locator shall record the same with the proper official, that is, with the provincial secretary or other officer designated by the government as mining recorder, within thirty days after the location thereof, in the district where it may be situated. Such record to be kept in a book for that purpose shall contain the name of the claim, the name of each locator, the locality of the mine, the direction of the location line, the length in meters, the date of location, the date of record (Sec. 31 of the Philippine Bill as amended).

2. *In Placers.* Secs. 10, 11 and 12 of Act 624 of the Philippine Commission govern the recording of this class of claims. Said sections read as follows:

> SEC. 10. Within thirty days after the location thereof every locator of a placer claim shall record the same with the mining recorder of the province or district in which the claim is situate."
>
> "SEC. 11. The record of a placer claim shall consist of a declaration of location reciting all the facts necessary to a perfect identification of the claim, and shall contain a true copy of the notice posted thereon at the date of location, as well as a description of the claim as staked and monumented, showing the length and approximate compass bearing, as near as may be, of each side or course thereof, and stating in what manner the respective corners are marked, whether by a standing tree, rock in place, post, or stone, and giving in detail the distinguishing marks that are written or cut on each, and also stating as accurately as possible, preferably by course and distance, the position of the claim with reference to some prominent natural object or permanent monument."
>
> "SEC. 12. No placer claim shall be recorded unless the declaration of location be accompanied by an affidavit made by the applicant or some person on his behalf cognizant of the facts, that the notice required by section nine of these regulations has been posted upon the claim, and that the ground thereby embraced is valuable for placer mining purposes; that the ground applied for is unoccupied by any other person."

The above provisions need no comments as they are very clear.

3. *In Lodes Within Placers.* The procedure followed in the recording of ordinary lodes, as already explained, governs this class of claims.

B. DUTIES OF THE MINING RECORDER. Assuming that all the above requirements of the law have been complied with on the part of the locator, in regard to recording, in turn what duty or duties devolve also upon the mining recorder?

Does he immediately record the declaration filed with him without first ascertaining the truth of its contents? The law is very clear on this point. It requires him as an officer of the government to perform cautiously and accurately his part so as to guard the former against frauds and abuses. Here lies his duty and he is responsible for its due performance. To insure this performance the law has made certain prohibitions in the recording of claims, expressly to the individual locator, and impliedly to the mining recorder in so far as the latter's functions are concerned.

1. *Prohibitions.* As to this point in the case of lode claims, Secs. 28 and 29, as amended, of the Philippine Bill, provide:

> "SEC. 28. That no mineral claim of the full size shall be recorded without the application being accompanied by an affidavit made by the applicant or some person on his behalf cognizant of the facts—that the legal notices and the posts have been put up; that mineral has been found in place on the claim proposed to be recorded; that the ground applied for is unoccupied by any other person. In the said declaration shall be set out the name of the applicant and the date of the location of the claim, The words written on the number one and number two posts shall be set out in full, and as accurate a description as possible of the position of the claim given with reference to some natural object or permanent monuments."
>
> "SEC. 29. (As amended by act of Congress approved February 6, 1905). That no mineral claim which at the date of its record is known by the locator to be less than a full-sized mineral claim shall be recorded without the word "fraction" being added to the name of the claim, and the application being accompanied by an affidavit or solemn declaration made by the applicant or some person on his behalf cognizant of the facts: That the legal posts and notices have been put up; that mineral has been found in place on the fractional claim proposed to be recorded; that the ground applied for is unoccupied by any other person. In the said declaration shall be set out the name of the applicant and the date of the location of the claim. The words written on the posts numbered one and two shall be set out in full, and as accurate a description as possible of the position of the claim given. A sketch plan shall be drawn by the applicant on the back of the declaration, showing as near as may be the position of the adjoining mineral claims and the shape and size, expressed in meters, of the claim or fraction desired to be recorded: Provided, That the failure on the part of the locator of a mineral claim to comply with any of the foregoing provisions of this section shall not be deemed to invalidate such location if, upon the facts, it shall appear that such locator has actually discovered mineral in place on said location and that there has been on his part a bona fide attempt to comply with the provisions of this Act, and that the non-observance of the formalities hereinbefore referred to is not of a character calculated to mislead other persons desiring to locate claims in the vicinity."

In regard to placer claims, Sec. 12 of Act 624 of the Philippine Commission provides:

> "No placer claim shall be recorded unless the declaration of location be accompanied by an affidavit made by the applicant or some person

> on his behalf cognizant of the facts, that the notice required by section nine of these regulations has been posted upon the claim, and that the ground thereby embraced is valuable for placer mining purposes; that the ground applied for is unoccupied by any other person."

From these provisions we can see that the affidavit of the applicant which must accompany the application should contain all the facts set forth therein in order to entitle him to record his claim. And the mining recorder must, before accepting the declaration, see that the provisions of the law have been complied with.

(a) *Proof of Citizenship.* As regards recording, there is a further provision of the law appearing in Sec. 13 of Act 624 regarding proof of citizenship. Said section provides:

> "No mining claim shall be recorded unless the declaration be accompanied by proof that the locator, or each of them in case there be more than one, is a citizen of the United States of America or of the Philippine Islands. The proof of citizenship required by this section may be that set forth in section thirty-five of the Act of Congress approved July first, nineteen hundred and two."

And by reference to Sec. 35 of the Philippine Bill we find:

> "That proof of citizenship under the clauses of this Act relating to mineral lands may consist in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge or upon information and belief; and in case of a corporation organized under the laws of the United States, or of any State or Territory thereof, or of the Philippine Islands, by the filing of a certified copy of their charter or certificate of incorporation."

With respect to the proof of citizenship by corporations organized and formed according to our Corporation Law, a very interesting and important question arises as to whether under Sec. 13 of Act 624 and Sec. 35 of the Act of Congress of July 1, 1902, a certified copy of their certificate of incorporation is a sufficient proof of their citizenship upon which they may be permitted to acquire mining rights in the Philippines. In case the mining recorder refuses to record their claim on the ground that they have failed to establish their citizenship, and subsequently a proceeding by the corporation affected ensues by reason thereof, how would the court having the jurisdiction decide the case? Would it take as the basis of its decision the citizenship of each individual member? Although at first glance this question seems easy to answer, nevertheless, it presents some difficulties. A reference to the provisions of the law seems to us indispensable. According to Sec. 6 of Act 1459, a corporation may be organized in the Philippines if a majority of its members are residents thereof. This is equivalent to saying that, irrespective of the citizenship of the individual members that compose it, so long as they are residents hereof, such a corporation may be legally formed according to our laws. Sec. 35 of the Philippine Bill, already cited, provides that a corporation thus organized or one created under the laws of the United

States, or of any state or territory thereof, may prove its citizenship just by filing a certified copy of its charter. The word "may" as used in the law, according to the rules of statutory construction, should be construed as equivalent to "shall" or "must" if the sense requires it. We believe that in said Sec. 35 it is to be used in the latter sense because the provision thereof is mandatory. Such being the case, a careful study of the above sections will give us the conclusion that a corporation, no matter what persons it may consist of, either aliens or otherwise, partly or wholly, can prove its citizenship by filing with the mining recorder a certified copy of its charter or certificate of incorporation, and thus unopposed can have its mining claim or claims recorded. By going only by the above sections we must inevitably reach that conclusion; but if we bear in mind the provisions of Sec. 21 of the Philippine Bill, the question would come out differently. Said section expressly provides that mineral lands are open to exploration, occupation and purchase only to citizens of the United States, or of the Philippine Islands. This means the entire exclusion of aliens or foreigners. The benefits created by it are extended only to the persons therein mentioned to the exclusion of others. The section cannot be construed otherwise. Being an Act of Congress, it is paramount in authority and should, therefore, control the later provision contained in the Corporation Law in so far as this would permit a corporation to be organized for acquiring mining rights without any requirement as to citizenship. This is in conflict with the provision of the Philippine Bill, and therefore inapplicable in so far as the acquisition and recording of mining claims are concerned. From the above considerations, our conclusion is that a corporation, the majority of whose members are residents of the Philippine Islands but which is composed partly or wholly of aliens or foreigners, cannot acquire mining rights therein, notwithstanding its being able to procure the certified copy of its certificate of incoporation. The individual citizenship of its majority members should, therefore, constitute the basis of our decision in cases of disputes arising from the refusal or non-refusal to the application for record of mining claims. Hence it is incumbent upon those officers intrusted with the carrying out of the provisions of the law to exercise the utmost care and diligence in ascertaining the true citizenship of corporations applying for record and should not always accept, as conclusive proof of their citizenship, the certified copy of the charter by them filed. This should be the rule as it is in accord with the policy of the law-making power in protecting the interests of its citizens against the ambition of outsiders.

For additional rules regarding the recording of declarations of location and of other instruments relating to mining claims, see Secs. 3, 4, 5, 6, 7 and 14 of Act 624 of the Philippine Commission.

(To be continued.)