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THE MINING LAWS OF THE PHILIPPINES

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(Continued from last month)

CHAPTER VI

HOW MINING CLAIMS ARE HELD

A. THE ASSESSMENT WORK. After the location of a mining claim is completed and the title thereto is vested in the locator, he retains this until a patent is issued to him, but only upon the condition that he work upon and improve the claim. This work is known as the assessment work. Sec. 36 of the Philippine Bill, as amended, governs this point and provides as follows:

> "On each claim located after the passage of this Act, and until a patent has been issued therefor, not less than two hundred pesos' worth of labor shall be performed or improvements made during each year: *Provided*, That upon a failure to comply with these conditions the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required thereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim and in two newspapers published at Manila, one in the English language and the other in the Spanish language, to be designated by the Chief of the Philippine Insular Bureau of Public Lands, for at least once a week for ninety days; and if, at the expiration of ninety days after such notice in writing or by publication, such delinquent shall fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures. The period within which the work required to be done annually on all unpatented mineral claims shall commence on the first day of January succeeding the date of location of such claim."

1. *Purpose.* The purpose of this labor is to protect the locator in his possesion as well as to prevent the same person from marking out many claims of discovery and then leave them for an indefinite length of time without further develop-

ment, and without actual possession, and seek in this way to exclude others from availing themselves of the abandoned mine (Beals *v.* Cone, 27 Colo. 473; Barklage *v.* Russell, 29 L. D. 401; Upton *v.* Santa Rita M. Co., 89 Pac. 275; B. A. Copper Co. *v.* Ute Copper Co., 181 Fed. 748). In short, it is the prevention of monopoly over the public mineral lands that the law desires to have and thus give all persons an equal opportunity to use that mineral part of the public domain.

2. *Nature and Extent.* Sec. 16 of Act 624 of the Philippine Commission has the following to say on this point:

> "Actual expenditures and cost of mining improvements by the claimant or his grantors, having a direct relation to the development of the claim, shall be included in the estimate of assessment work. The expenditures may be made from the surface, or in running a tunnel, drifts, or crosscuts for the development of the claim. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate unless it is clearly shown that they are associated with actual excavations, such as cuts, tunnels, shafts, and so forth, are essential to the practical development of and actually facilitate the extraction of mineral from the claim."

From this we see that any kind of work done in good faith for the development of the claim may be counted. The work need not be actually upon the surface ground or within the boundaries of the claim. It may be beyond them but must, of course, be for the purpose of prospecting or developing the claim sought to be held (Book *v.* Justice M. Co., 58 Fed. 106; Walton *v.* Wild Goose M. & T. Co., 123 Fed. 209; St. Louis Smelting Co. *v.* Kemp, 104 U. S. 636; Justice M. Co. *v.* Barclay, 82 Fed. 554; Wailes *v.* Davies, 158 Fed. 667). If done within the boundaries of the claim, the work will be available though it be upon a vein having its apex in another claim. It need not be upon the surface but may be beneath it. Can the assessment work be concentrated in one of two or several claims held in common? Although in our jurisdiction there is no provision of the law regarding this point, we believe that it may be done. Such is the rule in the United States (Rev. Stats. 2324 of the U. S.; Jackson *v.* Roby, 109 U. S. 440; McNeil *v.* Pace, 3 L. D. 267; Chambers *v.* Harrington, 111 U. S. 350; Royston *v.* Miller, 76 Fed. 50; Gird *v.* California Oil Co., 60 Fed. 531). The true test, therefore, of the assessment work is whether the work done, either inside or outside the claim, has some direct relation to the claim, or is in reasonable proximity to it, and actually benefits the claim to the extent of the two hundred pesos required by law. (Hall *v.* Kearny, 33 Pac. 373). What constitutes two hundred pesos' worth of labor is a question of fact to be determined from the evidence of each particular case.

In the case of placer claims located by an association of persons, containing more than eight hectares, the question arises as to the necessity of doing more than two hundred pesos' worth of labor. The numerous decisions of the United States Land Office hold that two hundred pesos' worth of annual labor performed upon one claim is sufficient. The reason for this is that the several claims held by an

association constitute a single one within the meaning of the law. However sound this interpretation may be, it has not been free from outside criticism, in that, it is said, it makes it easy to evade the purpose of the law.

3. *Time Required.* As a rule the labor must be done within the time specified by law, that is, annually (Belk *v.* Meagher, 104 U. S. 279; Mills *v.* Fletcher, 100 Cal. 142). The period within which the work required to be done annually on all unpatented claims commences on the first day of January succeeding the date of location of such claim. (Sec. 36, as amended, of the Phil. Bill). Nevertheless, the rule is now well settled that the annual labor for any particular year need not be done during that year, provided it has been commenced in good faith before the close of the year. In such a case, it may run over into the next year so long as it is continued to completion without interruption and with reasonable diligence. (See Costigan on Mining Law). The assessment work must be done each year until a patent has been issued. Performance of the work within the time required may be excused by reason of certain acts or events independent of the will of the holder. (Mills *v.* Fletcher, 100 Cal. 142; Field *v.* Tanner, 32 Colo. 278; Safford *v.* Fleming, 13 Idaho 271; Erhardt *v.* Boaro, 113 U. S. 527.)

4. *Proof.* While in some parts of the United States proof of annual labor is required, in other parts no such proof is required. Here in the Philippines, proof of annual labor must be made. This is required by Sec. 15 of Act 624 of the Philippine Commission. Said section provides as follows:

"Within sixty days after the expiration of the period fixed by law for the annual performance of the labor or the making of improvements upon a mining claim, the locator thereof, or some person on his behalf cognizant of the facts, shall make and file for record with the mining recorder of the province or district in which the claim is situate an affidavit in substance as follows:

AFFIDAVIT OF ANNUAL ASSESSMENT WORK
PHILIPPINE ISLANDS.

Province of.....
District of.....

....., being first duly sworn, deposes and says that he is a citizen of the United States of America (or of the Philippine Islands, as the case may be) and more than twenty-one years of age; that he resides in ..... province of ..... P. I., and is personally acquainted with the mining claim known as the ....(lode or placer) claim, situate in the barrio of..... ....., Province of ..... Island of ....., P. I., the declaration of location of which is recorded in the office of the mining recorder of said province (or district), in book ..... of Record of Mining Claims, at page .....; that between the ..... day of ....., 191...., and the..... ..... day of....., 191...., not less than .....

dollars' worth of labor was performed or improvements made upon said claim, not including the work done prior to the date of recording the same. Such work was done or improvements made by and at the expense of ....., the owner of said claim, for the purpose of complying with the laws of the United States relating to annual assessment work, and .....(here name the miners or other persons who did the work) were the persons employed by said owner who did such work or made such improvements, and that said work or improvements consisted of and are described as follows to wit:

.....(here describe the work done).

(Signature).....

Subscribed and sworn to before me this day of.....191....

.....

(*Signature of officer who administers oath*).

Such affidavit, when recorded, shall be prima facie evidence of the performance of such labor or the making of such improvements, and shall be received in evidence by all courts in the Philippine Islands, as shall also the record thereof or a certified copy of the same.

From this section we find that the affidavit should be filed within the sixty days, period; but we believe that it may also be done at any time thereafter, although it may not then have the same weight in evidence as before. At any rate failure to make said affidavit does not preclude the introduction of other evidence (Big Three M. & M. Co. *v.* Hamilton, 157 Cal. 130; Book *v.* Justice M. Co., 58 Fed. 106.

5. *Effect of Failure to Perform Labor.* Representation is thus the muniment of the locator's title. Having performed the labor required for the year his title is complete to the end of the year. How about if he fails? What effect would such failure have? Sec. 36 of the Act already cited answers the question; that is, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same has ever taken place, provided that the original locators, their heirs, assigns, or legal representatives have not resumed work upon the claim after failure and before such location. But this forfeiture does not take place until the year has elapsed, and it may even then be cured by the performance of the work in the manner already stated. It follows then that continued possession without the necessary work will not hold the claim, nor can the original locator who has failed to do his work prevent a peaceable entry for the purpose of relocating the claim. Resumption of work can defeat relocation by another if made at any time before the performance of all the acts necessary to complete the location, but it must be done in good faith, i. e., the work must be resumed with the intention of completing it and be pursued with reasonable diligence. Doing the full two hundred pesos' worth of work in any year will be taken to be resumption in good faith, unless the contrary appears.

In case the claim is held by two or more co-owners, there is a penalty provided for the co-owner who fails to perform his share of the work under Sec. 36 already

cited. Such penalty works as a forfeiture by reason of his failure to contribute his share of the cost of assessment work. The provision of the law therein stated should be strictly construed. Any irregularity in the proceedings will be taken advantage of to defeat it. It can only be enforced by one who was a co-owner at some time during the year when the work should have been done, and the notice must be to the owner at the time of the proceeding. If there has been no failure, of course, the publication of the notice referred to will be without effect. The only way, therefore, to save the interests of delinquent co-owners is to pay their respective shares. (As to the constitutionality of the provision of the law regarding this point, see Elder *v.* Horshoe Min. & Mill Co., 194 U. S. 248.)

CHAPTER VII

HOW TITLES TO MINING CLAIMS MAY BE TERMINATED

As we shall see later, the nature of a locator's title is just possessory and not a complete legal title. Hence it may be terminated either by abandonment or forfeiture (Black *v.* Elkhorn M. Co., 163 U. S. 445; Farrell *v.* Lockhart, 210 U. S. 142.)

A. BY ABANDONMENT. 1. *Nature.* Abandonment, legally defined, may be said to be the giving up or relinquishment of property to which a person is entitled with no purpose of again claiming it and without concern as to who may subsequently take possession. It is the voluntary forsaking or throwing away of the possessory title or property, leaving it open to the first comer (Brown *v.* Wilmore Coal Co., 153 Fed. 143; Costigan on Mining Law, p. 300). Ordinarily, abandonment is a question of fact to be determined, although, sometimes, it may become a question of law, especially where there is no dispute as to the facts (Brown *v.* Gurney, 201 U. S. 184). This question is one purely of intent, which is to be determined by the acts and conduct of the party. It may be express or implied (Brown *v.* Gurney, 201 U. S. 184; North American E. Co. *v.* Adams, 104 Fed. 404). Mere lapse of time alone will not work abandonment. An absence from the ground or failure to work it for any definite period, unaccompanied by other circumstances, is not evidence of abandonment (Mallett *v.* Uncle Sam M. Co., 90 Am. Dec. 484; McCarthy *v.* Speed, 50 L. R. A. 184). The *animus revertendi* is the simple test (Valcalde *v.* Silver Peak Mines, 86 Fed. 90; Buffalo Z. & C. Co. *v.* Crump, 91 Am. St. Rep. 87). Hence if there is no *animus revertendi*, the desertion of the claim determines the property at once. It must be an absolute desertion of the premises regardless of what may become of them. It would logically follow that if possession of the occupant be continued in another by the expression of a wish of the occupant to that other that he succeed to the possession, and he thereupon takes possession, a gift is the result; there is no abandonment (Richardson *v.* McNulty, 24 Cal. 339). It follows from this view that a relocation by the original locator is not an abandonment of the first location, although in the second location new parties are joined. An abandonment can be taken advantage of only by one who has subsequently acquired rights in the property.

2. *Method.* The method of abandonment is provided expressly in Sec. 34 of the Philippine Bill. It is as follows:

> That a holder may at any time abandon any mineral claim by giving notice, in writing, of such intention to abandon, to the provincial secretary or such other officer as by the Government of the Philippine Islands may be described as mining recorder; and from the date of the record of such notice all his interest in such claim shall cease.

Although this method of abandoning a claim is definite and convenient, yet it is not the only one, for there are several others as already intimated.

3. *Effect.* The effect of abandonment is to cause the claim to become again a part of the unoccupied and unappropriated public domain, open to location by anyone. Such abandonment inures to the benefit of no individual except a relocator (Badger G. M. Co. *v.* Stockton G. & C. M. Co., 139 Fed. 838; Brown *v.* Gurney, 201 U. S. 184). It can not be doubted that an actual abandonment of possession by a locator of a mining claim, such as would work an abandonment of any other easement, would terminate all the rights of possession which the locator then had (Black *v.* Elkhorn M. Co., 163 U. S. 445; Swanson *v.* Kettle, 17 Idaho 321).

B. BY FORFEITURE. 1. *Nature.* The forfeiture of a mining claim is the loss of the locator's possessory title thereto by a failure to perform those acts by which mining claims are held, or to comply with the requirements of mining regulations (Makary *v.* McDongal, 64 Pac. 669). Forfeiture cannot be established except upon clear and convincing proof of the failure of the locator to comply with the law regarding the annual labor or certain regulations provided for (Hammer *v.* Garfield M. & M. Co., 130 U. S. 291; McCulloch *v.* Murphy, 125 Fed. 147; McKay *v.* Neussler, 148 Fed. 86). In order to have a forfeiture take place, there must be some person, natural or artificial, who is entitled to receive the benefit of the forfeiture when it accrues. Tenants in common of mining land, acting under a company name, are incapable of taking or holding in the name of the company the interest of any of the tenants in common by forfeiture (Wiseman *v.* McNulty, 25 Cal. 230). There is no necessity for a judicial declaration of forfeiture. The loss of the title is absolute and may be asserted by anyone acquiring rights subsequently, provided the loss has not been repaired by the original locator himself.

2. *Effect.* The effect of forfeiture is, as in the case of abandonment, to cause the claim to become again a part of the unoccupied and unappropriated public land, open to relocation by some one else. The divestiture of the original title takes place only upon the acquirement of rights by a relocator. One who has forfeited his claim, by his failure to work his claim as required by law, may re-enter and resume work at any time before other rights attach in favor of subsequent locators (Lakin *v.* Sierra Buttess Gold Min. Co., 25 Fed. 337). The failure to comply with a mining rule or regulation cannot work a forfeiture, unless the rule itself so provides (Ruch *v.* French, 1 Arizona 99.)

C. DISTINCTION BETWEEN ABANDONMENT AND FORFEITURE. The principal distinction between the two lies in the intention. Abandonment is always a question of intention; whereas in forfeiture the element of intent is not involved. It rests entirely upon the law, and involves only the question whether or not the terms of the law have been complied with (Omar *v.* Soper, 11 Colo. 380; Mallett *v.* Uncle Sam M. Co., 1 Nev. 156; Peachy *v.* Frisco Gold Mines Co. 204 Fed. 659; McKay *v.* McDougall, 87 Am. St. Rep. 395; St. John *v.* Kidd, 26 Cal. 263). Abandonment is essentially instantaneous, despite the performance of the annual labor, but in order that it may be final, it requires relocation by a third person (Brown *v.* Gurney, 201 U. S. 184). Forfeiture is not complete until some one else enters with intent to relocate the property (Lakin *v.* Sierra Buttes C. M. Co., 25 Fed. 337; Beals *v.* Cone, 27 Colo. 473). Forfeiture will only ensue upon the lapse of the statutory period, if there is any, upon failure to represent the claim, and upon entry and location by another. Abandonment may be proved under the general issue, whereas forfeiture as a defense to an action must be especially pleaded (Renshaw *v.* Switzer, 6 Mont. 464; Morenhant *v.* Wilson, 52 Cal. 263.)

CHAPTER VIII

RELOCATION

A. NATURE. As already stated, the forfeiture or abandonment of a mining claim causes it to revert to the public domain. This being true, it may be again occupied by any one qualified originally to make a location. This reoccupation is called relocation. The requisite acts are similar to those in making an original location, except that the relocator may adopt the discovery and the monuments of the abandoned or forfeited location. He has the same time to perform these acts as had the orginal locator. No relocation may be made in the future (Belk *v.* Meagher, 104 U. S. 279). The new discovery of mineral is not essential as a basis of relocation, as long as the first is valid. So that if a relocator finds the vein exposed within the limits of the claim, this is sufficient to base a relocation upon (Armstrong *v.* Lower, 6 Colo. 393). The act of relocation is an admission of the validity of the original location, and amounts to an assertion of its abandonment or forfeiture (Bakkee *v.* Laier, 3 Alaska 95; Zeiger *v.* Dowdy, 13 Ariz. 331). There can be no relocation unless there has been a prior valid location, or something equivalent, of the same property (Belk *v.* Meagher, 104 U. S. 279; Clason *v.* Matko, 223 U. S. 646). Likewise there can be no relocation of mineral land until it has reverted to the public domain, so that a location upon land already validly located creates no rights and is not validated by a subsequent abandonment or forfeiture of the original location. The abandonment must actually have taken place or the forfeiture be complete before the ground can be relocated. The right of possession comes only from a valid location. Consequently, if there is no location, there can be no possession under it. Nor can a relocation be made of mining ground in the possession of others who have initiated a location and are diligently proceeding therewith. They are entitled

to a reasonable time to perform the necessary acts, and an attempted relocation during that time is merely a tresspass. Sec. 36 of the Philippine Bill is the law governing this point.

1. *Its Difference from Resumption.* The main difference between relocation and resumption lies in the fact that the former only takes place either through forfeiture or abandonment. It has nothing to do with forfeiture. Its operation is confined to the original locator; it does not apply to third persons. It is the making up of defects in the original location, which is incomplete, so as to prevent relocation by others. Relocation takes place on the assumption of a valid location already abandoned, whereas resumption is just a continuance of the imperfect location before other valid rights have intervened (Belk *v.* Meagher, 104 U. S. 279; Paris *v.* Muldoon, 75 Cal. 284). (See Sec. 36 of the Philippine Bill.)

B. KINDS. 1. *By Original Locator.* Relocation may be made either (1) by the original locator or (2) by third persons. In both cases it cannot be made unless the rights based on the original location have ceased. An original locator who has failed to perform the annual labor required by the statute may relocate his claim as any other stranger, either by himself, his heirs, assigns or legal representatives (Sec. 36 of the Philippine Bill). In addition to the right to resume work so as to exempt himself from the danger of incurring forfeiture, he has the right also to relocate as any other third person (Warnock *v.* De Witt, 1 Utah 324). This rule, according to the decision of the Supreme Court of Utah, is not conclusive, in that it is not in accord with those laid down by other courts. By the weight of authority, therefore, the better rule is that the original locator cannot treat his failure to perform or resume work as the basis of a valid relocation. Relocation by the same party takes place only where for any reason the original location is invalid. It would seem that as in such case the original location was no location, the second could not be a relocation within the definition. Any attempted relocation by another is prevented by the mere resumption of work by the original locator, if made at any time before the completion of the relocation, and provided that it is done in good faith. In this case it may be done even though the latter had failed to perform any work for the period of one year or more immediately before he resumed work (North Moonday M. Co. *v.* Orient M. Co., 1 Fed. 522; Erhardt *v.* Boaro, 113 Fed. 527.)

Where a claim had been abandoned in good faith by all of the several co-tenants, one could relocate with safety for the benefit of all. In accordance with this rule, the Supreme Court of Colorado and that of the United States have held "that a co-owner who amends the location notice, relocates the claim or procures the issuance of a patent in his name will not be permitted to thus exclude the other owners and appropriate the claim to himself, but will be declared to hold the right or title thereby acquired in trust for all, * * * nor will the trust be avoided or its enforcement defeated merely because a stranger to the original claim participates with the unfaithful co-owner in the proceedings to wrongfully exclude his companions in interest."

(Stevens *v.* Grand Central M. Co., 133 Fed. 28; Lockhart *v.* Leeds, 195 U. S. 427). In case of a relocation by a co-owner, however, he would have a right of contribution from his co-tenants for their proportion of expenditures made to save the common estate (Oliver *v.* Lassing, 57 Neb. 352; McSorley *v.* Lindsay, 62 Wash. 203.)

Where an agent relocates in behalf of his principal the rule is well settled that he does it for the latter. Hence such agent, trustee, or other person holding confidential relations with the original locator, will not be permitted to relocate mining claims and secure to himself advantages emanating from a breach of his trust obligations (Largey *v.* Bartlett, 18 Mont. 265; Fisher *v.* Seymour, 23 Colo. 542; Haws *v.* Victoria Copper Co., 160 U. S. 303). Where, however, the relation of trust is terminated between the principal and the agent, a subsequent relocation by the latter is valid (Page *v.* Summers, 70 Cal. 121).

Where the original locator makes a change in the boundaries of his claim which requires recording of an amended location certificate, it can also be said that there is a relocation by the original locator. (See Sec. 14 of Act 624 of the Philippine Commission.)

2. *By Third Person.* Where the relocation is made by a third person the same general rules as in the case of original locator apply. If the relocation is made by a third person and the notice posted states that the claim is a relocation of a former claim, it impliedly admits that the original location was valid, and the burden of proving that it was invalid by reason of want of discovery or otherwise is upon the relocator who asserts it (Costigan on Mining Law, pp. 310-11). A relocation by a third person on lands actually covered at the time by another valid and subsisting location is void; and this not only against the prior locator but also against all the world, because the law allows no such thing to be done (Belk *v.* Megher, 104 Fed. 279.)

a. *Premature Relocation.* This takes place when an attempt is made by a third person to locate, either before the original and perfected location is subjected to forfeiture, or after a prior prospector has made discovery and begun the acts of location, but before the time allowed him to finish the acts of location expire. Such kind of relocation by third person is entirely void *ab initio* and gives him no rights. Another case where this kind of relocation takes place is where an attempt is made by another to locate before the acts of recording or the time for record has expired. In such a case the relocation is without any force or effect as against the original locator. Similar to these premature relocations, there are also what are known as too tardy relocations. As the term indicates, such relocations are those that are made too late.

C. RIGHTS TO IMPROVEMENTS MADE. As to old improvements made in the location forfeited, if they are in the form of fixtures, they belong to the relocator. They are a part of the realty and the subsequent appropriation of the land carries with it necessarily whatever may be affixed to it. However, prior to the

termination of his estate by the perfection of a relocation, the prior locator has the right to sever and remove all such betterments and improvements as he deems wise; but his right to enter upon the land for that purpose ceases *ipso facto* when his estate is terminated. As to what are termed "fixtures" in so far as mining law is concerned, they have been frequently held to be machinery, such as engines, boilers, mills, pumps, and things of like nature affixed to the soil for mining. As such, they pass to the relocator as above stated (Merritt *v.* Judd, 14 Cal. 60; Treadway *v.* Sharon, 7 Nev. 37; Conde *v.* Sweeney, 16 Cal. App. 157, 116 Pac. 319). Upon application for patent by the relocator he will not be permitted to include in his estimate of the value of improvements required by law any of those made by the original locator (Yankee Lode, 30 L. D. 289; Copp's Min. Lands, p. 300). A grant from the original locator to one who has effected a valid relocation is ineffective for such purpose (Yankee Lode, 30 L. D. 289). Expenditures for such purpose must have been made by the relocator or his representatives (Rev. Stats. Sec. 2322.)

CHAPTER IX

THE TITLE BEFORE PATENT

A. THE RIGHT OF POSSESSION. 1. *Nature.* One who has completed a valid location of a mining claim has a title to the land. It is not the complete legal title. This is still in the government and is not acquired by the locator until he has received a patent for his claim. He has thus far only occupied a portion of those lands which are declared open to occupation and purchase. The legal title is acquired only when that occupation is followed by purchase. However, to the miner who holds and works his claim in good faith, such a possessory title is sufficient for all practical purposes. In the meantime he has a title good as against every one except the government. He is treated as the owner of the land and mines therein (Hughes *v.* Devlin, 23 Cal. 502; Watts *v.* White, 13 Cal. 321). Courts and laws have universally treated this possessory right as an estate in fee (Lavagrino *v.* Uhlig, 26 Utah 1; S. Co., in error, 198 U. S. 443). This estate of the locator is the subject of bargain and sale and is property in the fullest sense of the word and its ownership, transfer, and use are governed by the rules of our civil law. Such a claim may be sold, transferred, mortgaged, and inherited without infringing the title of the United States (Forbes *v.* Gracy, 94 U. S. 762; Del Monte M. & M. Co. *v.* Last Chance M. Co., 171 U. S. 55; O'Connel *v.* Pinnacle Gold M. Co., 140 Fed. 854). The locator then is thus granted the right of exclusive possession and enjoyment, to occupy, explore, and take therefrom the precious metals, and also the right, which it is his option to exercise or not as he pleases, to purchase the legal title or the patent from the government. As between the government and the locator the latter is the owner of the beneficial estate and the former holds the fee in trust. The location when perfected has the effect of a grant by the government of the right of present and exclusive possession of the lands located, at least for mining purposes (Clepper M. Co. *v.* Eli M. Co., 194 U. S. 220; Bradford *v.* Morrison, 212 U. S. 389). Actual possession is

not more necessary for the protection of the title acquired to such a claim by a valid location than it is for any other grant (Belk *v.* Meagher, 104 U. S. 279; Givillim *v.* Donnellan, 115 U. S. 45). It is in the nature of real estate. Although the locator may obtain a patent, this adds but little to his security (Chambers *v.* Harrington 111 U. S. 350). The owner of such a location is entitled to the exclusive possession and enjoyment against every one including the United States itself (McFeters *v.* Pierson, 15 Colo. 201; Gold Hill I. M. Co. *v.* Ish, 5 Or. 104; Reed *v.* Munn, 148 Fed. 737; Forbes *v.* Gracey, 94 U. S. 762; Manuel *v.* Wulff, 152 U. S. 505). This doctrine has been recognized by most courts and has never been seriously questioned (Manuel *v.* Wulff, 152 U. S. 505; Black *v.* Elkhorn M. Co., 163 U. S. 445; McKinley Creek M. Co. *v.* Alaska United M. Co., 183 U. S. 563; Bradford *v.* Morrison, 212 U. S. 389). The nature of the estate held by a locator in such a mining claim bears some resemblance to *emphyteusis* or *dominium utile* of our law. This right of possession does not come from mere possession, or from the simple act of occupation. It comes only from a valid location (Belk *v.* Meagher, 104 U. S. 279). The right of possession is conditional and the failure to perform the conditions subsequent prescribed by the statute, terminates it (Black *v.* Elkhorn M. Co., 163 U. S. 445).

Where there is a conflict or dispute of title, priority of location confers the better title. Sec. 32 of the Philippine Bill provides that in case of any dispute as to the location of mineral claim the title to the claim shall be recognized according to the priority of location, subject to any question as to the validity of the record itself and subject to the holder's having complied with the terms and conditions of said Act. From this provision it can be seen that a location made in pursuance of law and kept alive by compliance therewith will prevail over prior possession without location, provided it was peaceably made. (Franza *v.* Reavis, 7 Phil. Rep. 610). Where both parties have made no location and rely only on simple possession, priority of possession, of course, gives the better title. This right, however, can only be retained by continued occupancy and use, and is good as against a mere intruder who is without right. This kind of title covers only the ground in actual occupancy, the "pedis possessio," unless the miner has defined his claim by distinct, visible, and notorious boundaries (Attwood *v.* Fricot, 17 37; English *v.* Johnson, 76 Am. Dec. 574).

B. ACTION FOR THE POSSESSION OF MINING CLAIM. Mining claims being real estate, their possession is restored to the rightful owner, or preserved in him by means of the usual actions for enforcing the title to real property. The owner out of possession may maintain ejectment for his claim, or whatever action is provided by law. If he is in possession he may maintain an action to quiet his title when such action is recognized. In such an action the defendant must either deny and disapprove the validity of the plaintiff's location or show an abandonment or forfeiture followed by the acquisition of rights in the claim by himself. The question for decision in such an action is, Which party has complied with the requirements of the law and was prior in time? Proof of actual possession of mining claim under color of

title at the time of defendant's entry is enough upon which to recover in ejectment. The strictly legal title, being in the government, is not involved. The doctrine that plaintiff must recover on the strength of his own title and not on the weakness of his adversary's does not apply.

The elementary rule that one must recover on the strength of his own and not on the weakness of the title of his adversary has, however, been to some extent qualified and limited. It is true that possession alone, as we have already stated, is adequate as against a mere intruder or trespasser without even color of title, especially against one who has taken possession by force and violence; but in other cases the legal title must be shown, and even this is not sufficient in some other cases. If the plaintiff shows a valid possessory title, either by his having complied with the requirements of the law as to acts of location and other rules, or by proportionate and actual possession, he may recover, unless the defendant can establish a better title. In fine, the rule then is that the better title prevails (Naws *v.* Victoria Copper Mining Co., 160 U. S. 3033).

So that the real question then which is involved in an action for the possession of a mining claim is not whether the plaintiff has a strict legal title, indefeasible as against the whole world, but whether he has a better right to possession than the defendant. The title which enables him to recover in one action may not be available to him in another against another adversary, or, if available, may not be sufficient. His possession is, therefore, essentially different from that of a plaintiff in ejectment as generally regarded.

C. CONVEYANCE OF MINING CLAIM BEFORE PATENT. As already stated, mining claims are property, and, like any other property, may be alienated in the various ways in which property is conveyed. The possessory title passes to the grantee, not by operation of law, but by virtue of the conveyance (Manuel *v.* Wulff, 152 U. S. 505). In some parts of the United States a written conveyance is unnecessary where actual transfer of possession takes place, so that the mining claim may be conveyed by parol coupled with delivery of possession (Mining Co. *v.* Taylor 100 U. S. 37). The theory is that the possessory title being just a right or license to use the land and not an interest in the land, is not within the Statute of Frauds. But where the grantor was not in actual possession and did not deliver actual possession to the grantee, a written conveyance was necessary. This rule, which is recognized in some parts of the United States, is not, however, the one in force in this jurisdiction. Here the conveyance must be written, for a mining claim is held to be a real right and as such it is within the Statute of Frauds (Moore *v.* Hamerstag 109 California, 122; Hopkins *v.* Noyes, 4 Nevada 550; Houtz *v.* Gisborn, 1 Utah 173)

The ordinary form of conveyance is sufficient and proper for the transfer of mining claims. If the statute requires a bill of sale, no prescribed form of language is required. If a mining claim has a known descriptive name, it may be described in a deed by that name, and parol evidence is admissible to explain and locate it

Even if it is designated by different names, any one of these may be used, if the claim can be ascertained thereby. Where the same claim has been twice located by different names, a conveyance by either will carry all the grantor's title under both locations, even if the name used was that of an invalid location (Phillpotts *v.* Blasded, 8 Nevada 61; Weill *v.* Lucerne M. Co., 11 Nevada 200).

An agreement to convey a mining claim does not pass the title so as to enable the equitable grantee to maintain ejectment. So when the locators of claims agree in writing to form a corporation and convey their interest to it, until the conveyance is made, no title vests in the corporation (San Felipe M. Co. *v.* Belshaw, 49 California (665).

CHAPTER X

THE PATENT

A. REQUISITES AND PROCEDURE FOR OBTAINING PATENT. The possessory right obtained by location is, as we have already said, only an equitable title to the claim, the legal title remaining in the government. This legal title may, however, be purchased by the owner of the possessory right. The method required for this purpose is clearly provided in Sec. 37 of the Philippine Bill, as amended, which is as follows:

> "That a patent for any land claimed and located for valuable mineral deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this Act, having claimed and located a piece of land for such purposes, who has or have complied with the terms of this Act, may file in the office of the provincial secretary, or such other officer as by the Government of said Islands may be described as mining recorder of the province wherein the land claimed is located, an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the Chief of the Philippine Insular Bureau of Public Lands, showing accurately the boundaries of the claim, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such office, and shall thereupon be entitled to a patent for the land, in the manner following: The provincial secretary, or such other officer as by the Philippine Government may be described as mining recorder, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such an application has been made, once a week for the period of sixty days, in a newspaper to be by him designated as nearest to such claim, and in two newspapers published at Manila, one in the English language and one in the Spanish language, to be designated by the Chief of the Philippine Insular Bureau of Public Lands; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter

> within the sixty days of publication, shall file with the provincial secretary, or such other officer as by the Philippine Government may be described as mining recorder, a certificate of the Chief of the Philippine Insular Bureau of Public Lands that one thousand pesos' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the provincial secretary, or such other officer as by the Government of said Islands may be described as mining recorder, at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent upon the payment to the provincial treasurer, or the collector of internal revenue, of twenty-five pesos per hectare, and that no adverse claims exist; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this Act: Provided, That where the claimant for a patent is not a resident of or within the province wherein the land containing the vein, ledge, or deposit sought to be patented is located, the application for patent may be made by his, her or its authorized agent where said agent is conversant with the facts sought to be established by his affidavits."

We see then that the qualification of the applicant for patent is that he must be a person, association, or corporation authorized by law to locate a claim. This claim must have been regularly and lawfully located, the possessory title kept alive in the manner required by statute, and the applicant or those in his chain of title must have put upon the claim work or improvements of the value of one thousand pesos. All the above requirements, with the exception of the last, have already been sufficiently treated in the foregoing chapters. We shall consider hereafter the nature of such work or improvements. The law is so very clear regarding the requirements as to the application papers, survey, entry, affidavits, proofs, and publications, that it is unnecessary here to make comments on them. After all the legal requirements have been fulfilled by the party concerned, a patent shall be issued to the applicant upon his payment of the sum of twenty-five pesos per hectare to the proper officer designated by law. This is taken to mean, of course, that there has been no adverse claim filed. The law, after the expiration of sixty days of publication, creates a presumption in favor of the applicant that all the requirements imposed by the law have been by him fully fulfilled, and, therefore, as already stated, he is entitled to the issuance of the patent. From this time on, no third party who has failed to file his adverse claim in due time will be allowed a hearing to make objections, except to show that the applicant has failed to observe the provisions of the law (Sec. 37 of the Philippine Bill). Hence, all rights and claims adverse to, and conflicting with,

those of the applicant can be preserved only by the timely filing of objections, unless they are rights which from their nature cannot be concluded or affected by the patent if issued.

1. *Expenditure.* Turning now to the expenditure of one thousand pesos' worth of labor or improvements, it should not be confounded with the annual labor required for holding the possessory title, although this may be included in it. The former is a question between the government and the applicant, whereas the latter is solely one between adverse mineral claimants. If the one thousand pesos has been expended by the applicant or his grantor, the government will not concern itself with the question as to whether or not the annual labor has been regularly performed (In re Wolenberg, 29 L. D. 302). The expenditure of one thousand pesos must be made upon or for the claim for which the application is made. If the claim consists of several locations, it is not necessary that one thousand pesos' worth of improvements be put on each location (4 L. D. 374). The improvements are of the same general nature as the annual work. They must be used in connection with, and must be essential to, the development of the claim. They may be outside of the claim, so long as used in relation to it. Where the expenditure has been made on several claims, it cannot be counted for the benefit of one only. When a series of contiguous claims are being developed by one general system, as in the case of annual labor, work done on one of them may be credited to all, if sufficient in amount. But when they are distinct and separate tracts embraced in one application, there must be an expenditure of one thousand pesos on each (Good Return M. Co., 4 L. D. 221). The expenditure must be made by the applicant or his grantors, and consequently work done upon an original location cannot be counted in an application based on a relocation. Where, however, there is an amended location by which new ground is added, there need be no work done upon this; for the claim is an entirety, and if done on any part of the claim the expenditure is good. Expenditure is not necessary on a millsite connected with a lode, expenditure on the lode being sufficient to hold both.

B. ADVERSE CLAIMS. There are two known methods of opposing a patent application, namely, by adverse claim and by protest. The first method is an affirmation by the adverse claimant of his ownership of the location, the patent of which is being applied for. Sec. 39 of the Philippine Bill, as amended, governs this point of our subject, and provides as follows:

> "That where an adverse claim is filed during the period of publication it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavits thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a

court of competent jurisdiction to determine the question of the right of possession and prosecute the same with reasonable diligence to final judgment, and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the provincial secretary, or such other officer as by the Government of the Philippine Islands may be described as mining recorder, together with the certificate of the Chief of the Philippine Insular Bureau of Public Lands that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the provincial treasurer or the collector of internal revenue of the province in which the claim is situated, as the case may be, twenty-five pesos per hectare for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the provincial secretary, or such other officer as by said Government may be described as mining recorder, to the Secretary of the Interior of the Philippine Islands, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, rightly to possess. The adverse claim may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the province wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record, or any notary public of any province or military department of the Philippine Islands, or any other officer authorized to administer oaths where the adverse claimant may then be. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the Chief of Philippine Insular Bureau of Public Lands, whereupon the provincial secretary or such other officer as by the Government of said Islands may be described as mining recorder shall certify the proceedings and judgment roll to the Secretary of the Interior for the Philippine Islands, as in the preceding case, and patent shall issue to the several parties according to their respective rights. If, in any action brought pursuant to this section, title to the ground in controversy shall not be established by either party, the court shall not be established by either party, the court shall so find, and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the office of the provincial secretary or such other officer as by the Government of said Islands may be described as mining recorder or be entitled to a patent for the ground in controversy until he shall have perfected his title. Nothing herein contained shall be construed to prevent the alienation of a title conveyed by a patent for a mining claim to any person whatever."

From the above provisions of law we can see that the adverse claimant is given the whole sixty days' period of publication within which to file his adverse claim. This adverse claim must state fully and clearly the nature, boundaries and

extent of the conflict, whether the adverse party is a purchaser for valuable consideration or is a locator, and in either case proofs necessary to establish the fact should be furnished. The purpose of this is to advise sufficiently the applicant of the nature, boundaries, and the extent of said claim, so that he may prepare to establish, at the trial of the case, his own rights, and defeat the adverse claim (Kinney *v.* Van Bokern, 29 L. D. 460). Where the adverse claimant asserts rights under two separate claims which do not conflict with each other, he may file two separate adverse claims and maintain two separate suits (Mares *v.* Dillon, 30 Mont. 117). The filing of the claim has the effect, as the section says, of suspending all the proceedings, except the publication of notice and the making and filing of the affidavits thereof, until the rights of the respective parties are decided (Gwillim *v.* Donnellan, 115 U. S. 45; Richmond M. Co. *v.* Rose, 114 U. S. 576; Slothower *v.* Hunter, 15 Wyc. 189). The failure to file such adverse claim within the time fixed by law operates as a waiver of all rights which were the proper subject of such claim; and where an adverse claim is filed embracing an area which is only a part of the tract applied for, all rights of the adverse claimant to the remainder is conclusively presumed to be waived (Richmond M. Co. *v.* Rose, 114 U. S. 576; Dahl *v.* Raunheim, 132 U. S. 260; Lavagnine *v.* Uhlig, 198 U. S. 443; Lily Mining Co. *v.* Kellogg, 27 Utah, 111). The adverse claim may also be waived by a voluntary dismissal of it, by a transfer to the applicant of the interests of the adverse claimant, and by a dismissal of the action instituted in support of it. (Richmond M. Co. *v.* Rose, 114 U. S. 576.)

There is no doubt that the right to file an adverse claim belongs to every one having a claim to an interest in the land, of whatever nature, and is not affected by the character of the land. The policy of the law is to settle all conflicting rights before the issuance of the patent. Therefore, it is the duty of those whose right may be affected to take the proper steps to protect them. It appears, however, that not all of them are required absolutely to file their adverse claims. A previous patentee, or applicant for a patent for the same claim against subsequent applications, while his own is pending, is not required to file his adverse claim. Neither is a previous locator of a lode claim required to file an adverse claim as against an application for a placer patent for ground including his. On the other hand, a co-tenant who has not been joined in the application because of alleged default and consequent forfeiture of interest, and all other claimants whose title does not rise to the dignity of a grant, must, in order to preserve their rights, file adverse claims.

The action by the adverse claimant may either be at law or in equity. The action being possessory, it must take upon itself one or the other of the two forms, according as the plaintiff is in or out of possession (Perego *v.* Dodge, 163 U. S. 160). In the latter case, proof of possession is sufficient. Briefly, in order that either party to the action may prevail, it is necessary that he should establish a good possessory title and a compliance with the law and other mining rules and regulations. The

complaint must contain all the necessary allegations. An action on an adverse claim differs from other possessory actions in that a failure on the part of the plaintiff to establish his case does not necessarily result in a verdict and judgment for the defendant. The law does not create presumptions on this. The defendant must establish his claim, not only against his adversary, but also against the government. Hence, a failure on both sides to establish their claims will result in the dismissal of the case, and, therefore, both parties are left without rights to a patent for the premises in question (Jackson *v.* Roby, 109 U. S. 440).

Finally when the judgment has been rendered, certified, and filed by the successful party with the proper officer, said judgment is absolutely binding on the latter or on other officers of the Bureau of Public Lands, and the subsequent action of the latter must not conflict with it (Richmond M. Co., *v.* Rose, 114 U. S. 576). This judgment, nevertheless, does not give the successful party an absolute right as against the government, for this may still inquire into the character of the land, and as to whether the requirements and all conditions of the law have been complied with.

C. PROTESTS. The second method of opposing a patent, as already stated, is by means of protest. According to Costigan on Mining Law, p. 386, protest, unlike an adverse claim, is an objection made, not to acquire title for the objector, but to prevent the applicant for patent from getting title, because of some fatal defects, and it will not lie where an adverse claim is proper. A protestant is in the nature of an *amicus curiae*. The latter part of Sec. 37 of the Philippine Bill, as amended, provides: "That no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this Act." From this provision of law, we see that the purpose of the protestant is not to obtain title, but merely to prevent the applicant from getting the patent by reason of jurisdictional defects; that is, because he has failed to comply with certain requisites of the law. The protest must be filed at any time prior to the issuance of the patent, and if the facts upon which it is based are true, the application for patent should be dismissed.

D. PATENT BASED ON STATUTE OF LIMITATIONS. Patent may also be acquired in another way, and this is, under the statute of limitations. Sec. 45 of the Philippine Bill provides as follows:

> "That where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such periods shall be sufficient to establish a right to a patent thereto under this Act, in the absence of any adverse claim; but nothing in this Act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent."

It is thus seen that any one who has entered upon any public land or a portion of the public domain, and who has worked thereon continuously and used the same

for a period equal to that prescribed by the statute of limitations may procure a patent therefor as in the previous case. This is understood to take place, of course, when there is an absence of adverse claims. But merely occupying mineral lands for agricultural purposes is not sufficient to bring the case under the section. The lands must have been held and worked as mineral lands before the person so holding them can claim the benefits of the section. A location is not necessary in order to give an actual possessor the benefits granted by law, and a person having, at the time the Act of Congress of July 1, 1902, took effect, held and worked the mines for more than ten years, became after the taking effect of such Act entitled to a patent therefor. The actual possession by said person of the mines was not interrupted by the filing of a denouncement of the mines by a third person in accordance with the Spanish laws, nor by surveying and placing stakes thereon, nor by entering by threats and intimidation for the purpose of doing assessment work thereon. Any adverse claims to said mines must be determined in a judicial proceeding, but they cannot prevent the vesting of an interest in the property in the person otherwise entitled thereto by virtue of said section 45 (Fianza *v.* Reavis, 7 Phil. Rep. 610). Likewise, one may also enter under a location which is insufficient under the Mining Law, and the possession so taken may, if openly, notoriously, exclusively, and continuously held for a sufficient time, vest the possessor with a title which will be recognized by the government. (See Lindley on Mines, pp. 1272-3.)

E. NATURE AND EFFECT OF PATENT. A patent, according to Costigan, is a conveyance executed by the government which passes to the applicant the legal fee-simple title to the land. It is in the nature of both a conveyance and a judgment *in rem*, rendered by a quasi-judicial tribunal (Costigan on Mining Law, pp. 393-4). A patent for land is the highest evidence of title, and is conclusive even as against the government, and all claiming under junior patents or titles, until set aside or annulled by reason of fraud or imposition (Stone *v.* U. S., 2 Wall. 525; Hooper *v.* Scheimer, 23 How. 235; St. Louis Smelting Co. *v.* Kemp, 2020 U. S. 636; Hoofnagle *v.* Anderson, 7 Wheat. 212). From the various authorities just cited, we have observed the conclusiveness of the title emanating from the granting of a patent. It is the highest piece of evidence of a valid title, so that a direct attack even by the government cannot overcome it, cannot overthrow the presumption that it was correctly issued, unless sufficient, clear, and convincing proofs are established, invalidating it, by reason of fraud or otherwise.

A patent holds many advantages over a possessory title. Once a miner has obtained a patent, he is no longer required to perform the annual labor to hold his claim. A mere possessor has that obligation. A patent has the presumption that the land held is mineral, that there was a valid discovery thereon, and that the extent of the claim is legal, that is, it is not excessive. On the other hand, a possessory title does not carry with it said presumption. After the application for placer patent, all lodes discovered within the claim belong to the patentee, whereas, in the case of

possessory title, there is no such advantage, no such claim. With the delivery of a patent, the title which once was in the government to the patented property vests in the patentee.

CHAPTER XI

STATUTORY PROVISIONS REGARDING THE SALE OF PUBLIC LANDS CONTAINING PARTICULAR MINERALS

A. COAL LANDS. The laws and regulations by which the title to the general mineral lands of the public domain may be acquired by private individuals are different from those applicable to land chiefly valuable for deposits of coal. The old Spanish laws, by way of reference, are still more different, in that coal lands were governed by the general provisions of the Spanish law applicable to lands valuable for gold, silver, and other metals. There was no special law enacted on the subject. At present, a distinct system has been devised by which this kind of lands may be acquired. The general provision of our law, which is quite extensive, on the subject may be found in Secs. 53-57, inclusive, of the Philippine Bill, and in Act 1128 of the Philippine Commission, which is just an extension of the former, giving more details regarding the procedure to be followed in the acquisition of said lands. These provisions of law are as follows:

> "Sec. 53. (As amended by act of Congress approved February 6, 1905). That every person above the age of twenty-one years who is a citizen of the United States or of the Philippine Islands, or who has acquired the right of a native of said Islands under and by virtue of the Treaty of Paris, or any association of persons severally qualified as above, shall, upon application to the proper provincial treasurer, have the right to enter any quantity of vacant coal lands of said Islands not otherwise appropriated or reserved by competent authority, not exceeding sixty-four hectares to such individual person or one hundred and twenty-eight hectares to such association, upon payment to the provincial treasurer or the collector of internal revenue, as the case may be, of not less than twenty-five pesos per hectare for such lands, where the same shall be situated more than twenty-five kilometers from any completed railroad or available harbor or nagivable stream, and not less than one hundred pesos per hectare for such land as shall be within twenty-five kilometers of such road, harbor, or stream: *Provided*, That such entries shall be taken in squares of sixteen or sixty-four hectares, in conformity with the rules and regulations governing the public land surveys of the said Islands in plotting legal subdivisions.
>
> "Sec. 54. That any person or association of persons, severally qualified as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same shall be entitled to a preference right of entry under the preceding section of the mines so opened and improved."
>
> "Sec. 55. That all claims under the preceding section must be presented to the proper provincial secretary within sixty days after

the date of actual possession and the commencement of improvements on the land by the filing of a declaratory statement therefor; and when the improvements shall have been made prior to the expiration of three months from the date of the passage of this Act, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement; and no sale under the provisions of this Act shall be allowed until the expiration of six months from the date of the passage of this Act."

"Sec. 56. That the three preceding sections shall be held to authorize only the entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such section shall enter or hold any other lands under their provisions; and all persons claiming under section fifty-four shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant."

"Sec. 57. That in case of conflicting claims upon coal lands where the improvements shall be commenced after the date of the passage of this Act, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the passage of this Act, division of the land claimed may be made by legal subdivisions, which shall comform as nearly as practicable with the subdivisions of land provided for in this Act, to include as near as may be the valuable improvements of the respective parties. The Government of the Philippine Islands is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and preceding sections relating to mineral lands."

It is not necessary here to copy down the provisions of Act 1128. Sec. 1 of said Act deals with the qualifications of persons entitled to enter coal lands, the quantity of land and the number of entries that can be taken, and the shape of each entry; Sec. 2, the manner of initiating coal claims; Sec. 3, the manner of executing the declaration of location and its contents; Secs. 4 and 5, the recording of said declaration; Sec. 6, proof of rights and payment of claims, with certain restrictions; Secs. 7 and 8, the procedure for procuring a patent, including adverse claims; Sec. 9, the manner and place of preparing patents and for what purposes they are effective; and Sec. 10, the duty of the Chief of the Bureau of Lands with respect to preparing forms and instructions under the supervision of the Secretary of the Interior.

From a study of the above provisions of law, we find that there are two main entries. They are the ordinary cash entry and the cash entry under preferential right. In the former, no previous occupation or improvement of the land is necessary

and it is accomplished by the filing of a declaration of location, having its due contents, within the time prescribed by law, with the proper mining recorder. Upon payment for the land applied for, a patent is issued to the applicant, and from that time on he shall be the owner of the land in question. In the latter case, that is, under the preferential right, the actual possession of the land and the making of improvements thereon, give a preference of rights. The procedure for obtaining the patent under it is provided in Sec. 7 of the Act. (See Sec. 7 of Act 1128).

There are certain salient points of the law regarding coal lands which are not present in the general mining law. One of these is the age qualification. According to Act 1128, in order that a person may enter coal lands he must be at least twenty-one years old, and in this jurisdiction it is the age of majority. The true purpose of the law perhaps in imposing the age qualification is to obtain more favorable results from the development of these lands. It is said that a minor cannot manage his person or property, or both, and if he can, not with so much success as a person of age. It is the avoidance of that mismanagement, of waste, and of failure in a mining undertaking that the legislator had in view. Coal occupies a very important place in the commerce and industry of a nation, and should receive more protection. Consequently, more restrictions regarding their appropriation should be imposed. It is not surprising, therefore, that the age and the citizenship qualifications have been provided for by the legislator.

The word "association" found in section 1 of Act 1128 includes corporation. In order that a corporation may be entitled to the benefits of the Act, it is necessary that its members be those mentioned therein. Title to public coal lands which are considered as mineral lands (The Northern Pacific Ry. Co. *v.* Soderberg, 188 U. S. 526) can only be acquired in accordance with the provisions of the law or laws governing them, that is, according to those of the Act of Congress of July 1, 1902, and of Act 1128 of the Philippine Commission (Zacarias Omo *v.* The Insular Government, 11 Phil. 67). Hence a corporation not all of whose members are citizens of the Philippine Islands or of the United States as above stated cannot acquire coal lands in these islands (U. S. *v.* Trinidad Coal and Cooking Co., 137 U. S. 160). Neither can any corporation any of whose members have already occupied coal lands acquire further benefits from other lands (Sec. 1 of Act 1128; U. S. *v.* Trinidad Coal & C. Co., 137 U. S. 160).

B. SALINE LANDS. These lands are open to location and purchase in the same way as a placer claim. Sec. 58 of the Philippine Bill, as amended, has a definite and clear provision about them. They can be acquired either at public or private sale. Said section provides:

> "That whenever it shall be made to appear to the secretary of any province or the commander of any military department in the Philippine Islands that any lands within the province are saline in character, it shall be the duty of said provincial secretary or commander under the regulations of the Government of the Philippine Islands to take testi-

mony in reference to such lands, to ascertain their true character, and to report the same to the Secretary of the Interior for the Philippine Islands; and if upon such testimony the Secretary of the Interior shall find that such lands are saline and incapable of being purchased under any of the laws relative to the public domain, then and in such case said lands shall be offered for sale at the office of the provincial secretary or such other officer as by the said Government may be described as mining recorder of the province or department in which the same shall be situated, as the case may be, under such regulations as may be prescribed by said Government, and sold to the highest bidder for cash at a price of not less than six pesos per hectare; and in case such lands fail to sell when so offered, then the same shall be subject to private sale at such office, for cash, at a price not less than six pesos per hectare, in the same manner as other lands in the said islands are sold. All executive proclamations relating to the sales of public saline lands shall be published in only two newspapers, one printed in the English language and one in the Spanish language, at Manila, which shall be designated by said Secretary of the Interior."

From this provision we observe that the settled policy of the government in the disposition of salt lands is to reserve the same from general disposal. The word "salines" includes deposits of rock salt, so that the latter are not subject to entry under the laws authorizing the acquisition of title to mineral lands (Southwestern M. Co., 14 L. D. 597).

CHAPTER XII

MISCELLANEOUS PROVISIONS

A. CONTRACTS. 1. *Mining Partnership.* When two or more persons unite and co-operate for the purpose of working a mine and actually so engage, they form what is known as a mining partnership (Childers *v.* Neely, 81 Am. St. Rep. 777; Howard *v.* Luce, 171 Fed. 584). Such a partnership is governed by most of the rules relating to an ordinary partnership, either commercial or civil, and also some rules proper to itself (Kahn *v.* Central Smelting Co., 102 U. S. 641; see the provisions of our Civil and Commercial Codes on partnerships). The principal features which distinguish a mining partnership from an ordinary one are: (1) the absence of *delectus personae*, which characterizes the latter; (2) neither death or absence of one, nor the sale by him of his interest against the protests of the others, dissolves the partnership; (3) there is no general implied authority of any to bind the other members. Only the decision of the members owning a majority of the shares binds the partnership in the transaction of its business unless there are agreements to the contrary. (Jones *v.* Clark, 42 Cal. 180; Kahn *v.* Central Smelting Co., 102 U. S. 641; Bissel *v.* Foss, 114 U. S. 252). In such a case, one partner may bind the company. The mere fact that one is a tenant in common and works the claim, does not produce a contract of this kind, although the other co-tenants may hold him responsible. Mere co-tenancy does not create a mining partnership (Tuck *v.* Downing, 76 Ill. 71; Doyle *v.* Burns, 123 Iowa 488). With regard to the rights and obligations of co-tenants, see Arts. 392-406, 1513 *et. seq.* of the Civil Code, which are the controlling provisions.

2. *Prospecting Contracts.* This kind of contract is formed when a miner is furnished the necessary supplies by other persons who wish to locate mining claims, and in return agrees to prospect and to locate for the latter under the terms and conditions agreed upon. The contract is sometimes called qualified partnership, but unless the agreement goes beyond the mere furnishing of supplies in consideration of a participation in the profits, the word "partnership" should not be used; otherwise, it would be misleading (Hendricks *v.* Morgan, 167 Fed. 106; Hardin *v.* Hardin, 26 S. D. 601). For the enforcement of the mutual obligations on the part of both parties, the rules relating to contracts are to be applied. (See the provisions of our Civil Code relating to contracts.)

3. *Mining Licenses and Leases.* These are other forms of contract relating to mines. A mining license is an authority to enter the land of the licensor to do certain acts, but passes no estate or interest in the land (Riddle *v.* Brown, 56 Am. Dec. 202; Wyrm *v.* Garland, 68 Am. Dec. 190). A lease has been defined to be a contract for the possession and profits of lands and tenements on the one side and a recompense of rent or other income on the other (Jackson *v.* Harsem, 17 Am. Dec. 517). The principal difference between the two contracts is that in the former the licensee has no permanent estate in the land itself, but only in the proceeds, and in such proceeds not as realty but as personalty; whereas in the latter, where the lessee enters into possession and takes in the property, the case is very different (Wheeler *v.* West, 7 Cal. 126; Gillett *v.* Treganza, 6 Wis. 343). See our Civil Code on contracts of lease.

B. ACTIONS. 1. *Ejectment.* The action of ejectment is one to try the title to mining claims. It may be maintained by any person whose rights have been injured, and it does not matter that there is no statute authorizing him to do it and that the legal title is still in the government. The mere fact of his possession is enough to entitle him. The provision of our Civil Code in regard to this point is very clear, as it authorizes any one who has been prejudiced in his possessory rights to obtain redress therefor, through the proper channels of our procedural law. This is in accordance with the well recognized principles of civil law. In the United States the action for ejectment needs the enactment of statutes to authorize the same, while in this jurisdiction no statute is required. (See Sec. 80 of our Code of Civil Procedure.)

2. *Trespass.* This is another kind of action for the purpose of vindicating one's rights to mining claims, to resist the unlawful acts of another. It is maintained when the aggrieved party desires to recover damages for the wrongful extraction of minerals out of his property by a trespasser, or to try the title itself. In the United States, cases under this frequently arise by reason of the fact that there the holder of a mine may pursue a vein of mineral into and underneath the adjacent property of his neighbor, without violating any property rights. In such a case the question of ownership of the segment of the disputed vein naturally is brought in issue, and thus the question of title arises. In the Philippine Islands, there being no such laws,

an action of trespass rarely occurs from the same cause. The ownership of the underground minerals is limited only within the perpendicular area, and the knowledge of this rule on the part of each of the adjoining owners has frequently avoided litigation, although greed for gold has affected it to a more or less extent. The action of trespass is prescribable as any other action. According to our Code of Civil Procedure it prescribes within four years after the right of action accrues (Sec. 43 of Act 190). With regard to the measure of damages, the rule depends upon whether the trespass was made in good or bad faith. If it was within the case of the former, the defendant is only obliged to pay the value of the mineral as it was in the mine with certain deductions by reason of the expenses of mining. But if within that of the latter, he is compelled to pay the whole value without being reimbursed for the cost of mining, besides paying exemplary damages, if any are proper (St. Clair *v.* Cash Gold M. & M. Co., 47 Pac. 466; see our Civil Code regarding damages).

3. *Injunction.* There are two kinds of injunctions. They are the temporary and the final injunctions. The first is usually granted by the court at the instance of the complaining party in cases where irreparable injury is being done or attempted to be done on the mining estate, such as the unlawful extraction of ores from it without any authority whatever, pending a litigation of its title. The second takes place when upon the final trial of an action it appears that the complainant is entitled to said relief, in which case the court grants it perpetually, restraining the defendant from continuing the unlawful act. The granting or withholding of this class of remedy is discretionary on the part of the court; but in case of doubt this should be resolved in favor of the writ (Gilpin *v.* Sierra Nevada Cons. M. Co., 2 Idaho 662). A denial of the remedy where the granting of it clearly and conclusively appears from the facts presented to the court is equivalent to a denial of all protection (Henshaw *v.* Clark, 14 Cal. 460). See the provisions of our Code of Civil Procedure regarding injunctions, Secs. 162-172, inclusive.

4. *Partition.* This point is generally governed by the provisions of our Code of Civil Procedure, found in Sections 181-196 thereof, as well as by certain provisions of our Civil Code. From these provisions it can be seen that mining claims, being real property, may be partitioned between co-tenants, and any of these may go even as far as to compel the partition thereof in the manner therein prescribed. Thus, one co-tenant may bring an action in the proper court against the others and have his share apportioned from the whole claim. He may also, at his option, conclude an amicable partition with the others, avoiding in this way the expenses and trouble of litigation. In the United States, it has been often said that parol partition executed by the interested parties taking hold of their exclusive portions, is valid and binding among them (420 M. Co. *v.* Bullion M. Co., Fed. Cas. No. 4989). In the Philippines, however, this rule cannot be applied, because according to the principles of our law, whenever conveyance of real property is involved that should be in writing as being within the Statute of Frauds.

5. *Eminent Domain.* According to well recognized authorities, the true test as to whether or not a taking of private property is for a public use rests upon the answer to these questions: Will it foster and encourage the immense and natural advantages, resources, and industrial activities of the State? Will it contribute to the general growth and prosperity of the country? If the answer is affirmative there can be no question about the legality of such use. But if, on the other hand, the negative is the proper answer, no offers of compensation, however extravagant, can oblige summarily a person who is in the peaceful enjoyment of his property to part even with one inch of it. Under our law no authority can compel him to do so. The determination of those questions rest entirely within the jurisdiction of the great courts of justice, and not with the legislative authority. Hence a mining claim, even though generally not subject to the right of eminent domain, may oftentimes be appropriated to public use in those cases where the public welfare of the community clearly demonstrates it. In such a case the private necessity must give way to public welfare, not of course, without giving first due compensation for said use. (See Secs. 241 and 253, inclusive, of our Code of Civil Procedure.)