

gives no support to the claim that it disregarded or intended to break its promises. We conclude that, as found by the lower courts—rightly declining to follow the decision of the Circuit Court of Appeals for the Sixth Circuit in *Federal Life Ins. Co. v. Rascoe, supra*, 696—the company did not repudiate the policies. In view of that fact, we need not, and therefore do not, decide whether the doctrine of anticipatory breach is applicable to the class of cases to which this one belongs. *Dingley v. Oler, ubi supra.*

Affirmed.

ICKES, SECRETARY OF THE INTERIOR, *v.* VIRGINIA-COLORADO DEVELOPMENT CORP.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

No. 23. Argued October 16, 1934.—Decided June 3, 1935.

1. Under R. S., § 2324, a default in performance of annual labor on a mining claim renders it subject to relocation by some other claimant; but it does not affect the locator's rights as regards the United States; and he is entitled to preserve his claim by resuming work after default and before relocation. P. 644.
2. The Secretary of the Interior has authority to determine that a claim is invalid for lack of discovery, for fraud, or other defect, or that it is subject to cancellation for abandonment. P. 645.
3. With respect to specified minerals, including oil shale, the Mineral Leasing Act of 1920 substituted a leasing system for the old system of acquisition by location. It excepts, however, valid claims existent at the date of the passage of the Act and thereafter "maintained" in compliance with the laws under which initiated, "which claims may be perfected under such laws." Plaintiff had valid oil shale placer locations, located in 1917 and sustained by performance of annual labor in the years following, until the year ending July 1, 1931, when there was a default, but with no intention to abandon the claims. Two months later, while plaintiff was preparing to resume work, the Land Department began adverse

Argument for Petitioner.

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proceedings in which it declared that, because of the default, the claims were void. *Held*, that the case was within the exception in the Mineral Leasing Act, and that the proceedings were without authority and were properly enjoined in a suit against the Secretary of the Interior. P. 645.

63 App. D. C. 47; 69 F. (2d) 123, affirmed.

CERTIORARI, 292 U. S. 620, to review the affirmance of a decree requiring the Secretary of the Interior to vacate adverse proceedings against plaintiff's oil shale locations and his decision declaring the locations void.

Assistant Attorney General Blair, with whom *Solicitor General Biggs* and *Mr. H. Brian Holland* were on the brief, for petitioner.

The question presented is the one which was reserved in *Wilbur v. Krushnic*, 280 U. S. 306, 317, 318.

The only requirement for the maintenance of a claim under the old mining law, once the claim had been perfected, was the requirement in R. S., § 2324 as to annual assessment work. The frequency with which "maintained," or equivalent expressions, such as "kept up," "kept alive," "preserved," are encountered in the opinions of this Court in connection with annual assessment work (see *Gwillim v. Donnellan*, 115 U. S. 45, 48; *El Paso Brick Co. v. McKnight*, 233 U. S. 250, 256; *Union Oil Co. v. Smith*, 249 U. S. 337, 349; *Cole v. Ralph*, 252 U. S. 286, 295) shows that those words had a well-understood meaning. This Court appears to have attributed this meaning to the word "maintained," in the Leasing Act. *Krushnic* case, *supra*.

The obligation to perform annual assessment labor was a condition subsequent to the right of exclusive possession granted by the United States. *Union Oil Co. v. Smith*, *supra*; *Black v. Elkhorn Mining Co.*, 163 U. S. 445, 450. Failure to comply with the condition opened the claim to relocation by another. It did not, however, result in

forfeiture of the claim as against the Government, for the Government had no direct interest in the matter, being concerned only with seeing that its mineral-bearing lands were kept open for private exploitation. *Rev. Stats.*, § 2319; 30 U. S. C. 22; *Union Oil Co. v. Smith, supra*, p. 346; *Cole v. Ralph*, 252 U. S. 286, 294; *Chambers v. Harrington*, 111 U. S. 350, 353.

It may be assumed that the Government's interest in preventing its mineral lands from being monopolized by those who were unwilling or unable to develop them was sufficiently protected by exposing locator to the risk of having their claims appropriated by rival claimants. In any event, it is obvious that no good purpose was to be served by permitting repossession by the Government itself, when the Government had no intention of doing anything but reassign the land to some other private individual for his own use and benefit.

The Leasing Act effected a complete change of policy in respect of lands containing oil and oil shale. Relocation became impossible, the Government's offer to locator having been withdrawn. Thus the locator who fails to perform assessment work no longer runs the risk of having his claim appropriated by a rival claimant, and if the court below was correct in holding that the Government may not take advantage of the default, the right which was subject to a condition when initiated is now unconditional. Such a result would be out of harmony with the evident policy of both the old mining law and the 1920 Act. It would hinder the disposition of lands under the Act and deprive the Government of royalties, although the lands were not being diligently exploited by the claimant.

If the locator fails to perform annual labor, then, by the terms of the Leasing Act the United States is given the right to challenge the validity of the claim by reason of such default. The possibility of relocation is taken

away and the possibility of intervention substituted. The risk is substantially the same.

Under the decision below, the status of lands containing any of the minerals named in the Leasing Act would be extremely difficult of ascertainment if the title is clouded by notices of location made prior to 1920. The Government would be put to the necessity of establishing by evidence *aliunde* that the claims had been abandoned, for abandonment depends largely on intention, and mere absence or failure to work the claim for any definite time is not sufficient to prove that it has been abandoned. *Black v. Elkhorn Mining Co.*, *supra*; *Peachy v. Frisco Gold Mines Co.*, 204 Fed. 659. See also *Lindley, Mines*, 3d ed., §§ 642-644.

The Secretary of the Interior had implied authority to institute proceedings to resume possession for the Government. *Cameron v. United States*, 252 U. S. 450, 459, 460, 461; *Federal Shale Oil Co.*, 53 L. D. 213, 216-217.

Mr. Louis Titus, with whom *Mr. Charles L. Frailey* was on the brief, for respondent.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

The Virginia-Colorado Development Corporation brought this suit to obtain a mandatory injunction against the Secretary of the Interior requiring him to vacate certain adverse proceedings and his decision declaring certain placer claims of the plaintiff to be void. Motion to dismiss the bill of complaint was denied and, on defendant's refusal to plead further, plaintiff obtained a decree which the Court of Appeals affirmed. 63 App. D. C. 47; 69 F. (2d) 123. This Court granted a writ of certiorari, 292 U. S. 620, in view of the question as to the construction of the Mineral Leasing Act, February 25, 1920, c. 85, 41 Stat. 437; 30 U. S. C. 181, 193.

The bill alleged that in June, 1917, under § 2324 of the Revised Statutes (30 U. S. C. 28), plaintiff located certain oil shale placer claims on mineral lands of the United States in Colorado and thereupon became the owner of the claims and entitled to their exclusive possession; that from that time until, and including, the year ending July 1, 1930, the annual assessment work required by the statute was performed on each of the claims; that during the year ending July 1, 1931, the assessment work was not performed and had not been resumed before September 4, 1931, or since, but that plaintiff then intended to resume work, and had made arrangements for that resumption which would have been had but for the action of defendant; that plaintiff had not abandoned, or intended to abandon, any of the claims and that no charge to that effect had been made; that about September 4, 1931, adverse proceedings were initiated by the Department of the Interior, through the General Land Office, with the filing of a "challenge" to plaintiff's title and right of possession and by "posting such challenge on the said claims"; that the challenge was based on the sole ground that plaintiff had not performed the annual assessment work and that "the United States resumed possession of said land."

Plaintiff further alleged that there had been "no relocation of any of the claims by any person since plaintiff's failure to perform the annual assessment work, and that there had been no application by anyone to lease any of the claims from the United States." Plaintiff recited the answer he had made to the challenge, in substance, that notwithstanding his failure to perform the described work, he had the right to retain possession of the claims and to resume work thereon "at any time prior to a valid subsequent location of said claims"; but that the Commissioner of the General Land Office had held that the claims were null and void, and his ruling had been af-

firmed by the Secretary of the Interior whose decision had been promulgated declaring that the United States had taken possession for its own purposes, thus in effect decreeing a forfeiture.

Plaintiff then set forth the provisions of the Mineral Leasing Act of February 25, 1920, which authorized the Secretary of the Interior to execute leases of mineral lands, but contained an exception as to valid claims existing on the date of the passage of the Act "and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery."¹

1. The character and extent of the right which plaintiff acquired by virtue of its location of the mining claims, in 1917, are well established. Restating the rule declared by many decisions, we said in *Wilbur v. Krushnic*, 280 U. S. 306, 316, that such a location, perfected under the law, "has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term." It is alienable, inheritable, and taxable. See *Forbes v. Gracey*, 94 U. S. 762, 767; *Belk v. Meagher*, 104 U. S. 279, 283; *Manuel v. Wulff*, 152 U. S. 505, 510, 511; *Elder v. Wood*, 208 U. S. 226, 232; *Bradford v. Morrison*, 212 U. S. 389,

¹ Section 37 of the Act of February 25, 1920, c. 85, 41 Stat. 437, 451 (30 U. S. C. 193) is as follows:

"Sec. 37. That the deposits of coal, phosphate, sodium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits described in the joint resolution entitled 'Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal mining operations on certain lands in Wyoming,' approved August 1, 1912 (Thirty-seventh Statutes at Large, p. 1346), shall be subject to disposition only in the form and manner provided in this Act, except as to valid claims existent at date of the passage of this Act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery."

394. Under § 2324 of the Revised Statutes (30 U. S. C. 28), the owner is required to perform labor of the value of \$100 annually, but a failure to do so does not *ipso facto* forfeit his claim, but only renders it subject to loss by relocation. The law is clear "that no relocation can be made if work be resumed after default and before such relocation." Thus, prior to the passage of the Leasing Act of 1920, the annual performance of labor "was not necessary to preserve the possessory right, with all the incidents of ownership above stated, as against the United States, but only as against subsequent relocators. So far as the government was concerned, failure to do assessment work for any year was without effect. Whenever \$500 worth of labor in the aggregate had been performed, other requirements aside, the owner became entitled to a patent, even though in some years annual assessment labor had been omitted." *Wilbur v. Krushnic, supra.*

There was authority in the Secretary of the Interior, by appropriate proceedings, to determine that a claim was invalid for lack of discovery, fraud, or other defect, or that it was subject to cancellation by reason of abandonment. *Cameron v. United States*, 252 U. S. 450, 460; *Cole v. Ralph*, 252 U. S. 286, 296; *Black v. Elkhorn Mining Co.*, 163 U. S. 445, 450; *Brown v. Gurney*, 201 U. S. 184, 192, 193; *Farrell v. Lockhart*, 210 U. S. 142, 147.

2. The Leasing Act of 1920 inaugurated a new policy. Instead of the acquisition of rights by location, the Act provided for leases. But by express provision, the Act saved existing valid claims "thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws." § 37.² What then was the status of plaintiff's claims under this exception? They were originally valid claims. No question is raised to the contrary. There is no suggestion of

² See Note 1.

lack of discovery, fraud or other defect. There is no ground for a charge of abandonment. The allegations of the bill, admitted by the motion to dismiss, dispose of any such contention. Plaintiff had lost no rights by failure to do the annual assessment work; that failure gave the government no ground of forfeiture. *Wilbur v. Krushnic, supra.*

How could the valid claims of plaintiff be "thereafter maintained in compliance with the laws under which initiated"? Manifestly, by a resumption of work. Plaintiff was entitled to resume, and the bill alleged that plaintiff had made arrangements for resumption, and that work would have been resumed if the Department of the Interior had not intervened. Plaintiff's rights after resumption would have been as if "no default had occurred." *Belk v. Meagher, supra.* Such a resumption would have been an act "not in derogation but in affirmation of the original location," and thereby the claim would have been "maintained." As we said in *Wilbur v. Krushnic, supra*, p. 318, "Such resumption does not restore a lost estate . . . ; it preserves an existing estate."

In this view, plaintiff came directly within the exception. The Government invokes the new policy of the Leasing Act abolishing the practice of location. But the saving provision of § 37 is a part of the policy of the Act. Its terms explicitly declare the will of Congress as to valid existing claims, with full understanding of the status of such claims under the prior law.

The Government refers to the reservation in the opinion in *Wilbur v. Krushnic, supra*, as to the maintenance of a claim by a resumption of work "unless at least some form of challenge on behalf of the United States to the valid existence of the claim has intervened." But that was a reservation, not a decision, and it does not aid the Government in its contention here. To be effective, the

“challenge” to the “valid existence” of a claim must have some proper basis. No such basis is shown.

We think that the Department’s challenge, its adverse proceedings, and the decision set forth in the bill went beyond the authority conferred by law. The decree is

Affirmed.

MINNIE *v.* PORT HURON TERMINAL CO. ET AL.

CERTIORARI TO THE SUPREME COURT OF MICHIGAN.

No. 678. Argued April 12, 1935.—Decided June 3, 1935.

A longshoreman, while unloading a vessel in navigable water, was swept from the deck by the ship’s hoist and precipitated upon the wharf, where he was hurt by the fall. *Held* that the cause of action was in admiralty. P. 648.

269 Mich. 295; 257 N. W. 831, affirmed.

CERTIORARI, 294 U. S. 704, to review a judgment of the Supreme Court of Michigan vacating an award of the state compensation commission.

Mr. Eugene F. Black, with whom *Mr. Jesse P. Wolcott* was on the brief, for petitioner.

Mr. Leo J. Carrigan filed a brief on behalf of respondents.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

Petitioner, a longshoreman, was injured at Port Huron while unloading a vessel lying in navigable water. He was about his work on the deck of the vessel when he was struck by a swinging hoist, lifting cargo from a hatch, and was precipitated upon the wharf. He sought compensation under the compensation act of the State of Michigan. His employer, the Port Huron Terminal Company, contended that the accident occurred upon navi-