

Then the sheriff proceeded to sell, as goods, the said interest, made a deed, and the purchaser Forgie, who holds and held a miner's license, endeavoured to have this deed recorded. The Recorder refused and Forgie appealed to the Mining Commissioner who dismissed his appeal.

In the meantime Wishart had transferred his interest pursuant to the Act, and this transfer was recorded. Forgie took proceedings to have this set aside—the Mining Commissioner refused.

The execution creditor and the purchaser at the sheriff's sale, Forgie, now appeal—and the real question to be decided is whether the interest of one in the position of Wishart is exigible—or rather was exigible before the recent Act 2 Geo. Vict. ch. 8, sec. 7.

The position of a licensee under the Mining Act is rather anomalous. He may, sec. 34, prospect on certain Crown lands without being or being considered a trespasser: if he discover valuable mineral he may (sec. 35) stake out a claim in a certain specified form, but not more than three in any one division during a license year (sec. 53)—then he may (sec. 59) apply to have the claim recorded, and on certain conditions he may (sec. 64) receive a certificate of record. Up to this time he has no right, title, interest or claim in or to the mining claim other than the right to proceed to obtain a certificate of record and ultimately a patent (sec. 68), and he is a mere licensee of the Crown; but after the issue of the certificate he is a tenant-at-will of the Crown until he procures his patent (sec. 68).

He may transfer his interest in the claim to another licensee or may work the claim subject to the other provisions of the Act (sec. 35)—this transfer may be in form 11, but it shall be signed by the transferor, or by his agent authorized by instrument in writing" (sec. 72), and "except as in this Act otherwise expressly provided, no transfer . . . affecting a mining claim or any recorded right or interest acquired under the provisions of this Act shall be entered in the record or received by a Recorder unless the same purports to be signed by the recorded holder of the claim or right or interest affected, or by his agent authorized by recorded instrument, nor shall any such instrument be recorded without an affidavit (Form 12), attached to or endorsed thereon made by a subscribing witness to the instrument. But after the issue of the certificate of record "the mining claim shall not in the absence of mistake or fraud be liable to impeachment or