

probably having in view the undesirability of founding a property right on statements which are not really evidence, as pointed out by Lord Justice Cotton in *Gilbert v. Edean* (1878), 9 Ch.D. at pp. 268, 269. . . .

The real objection to the method pursued is, that the affidavit must state certain matters of fact required under the Mining Act to exist, or be done, in order to secure a claim: i.e., the discovery of valuable mineral in place, the situation of the discovery post, the length of the outlines, the staking done, the lines cut and blazed, the possession of a miner's license, and that there was nothing on the land to indicate that it was not open for staking.

There is nothing to require a licensee to do all these acts himself (see 8 Edw. VII. ch. 21, sec. 22, sub-sec. 2, and sec. 35); but, before he records his application, he must swear to the required affidavit; and, in view of the provisions of sees. 49 to 56, that affidavit necessarily includes a statement that the claim was staked out "upon the said discovery" and that "the distances given in the application and sketch or plan are as accurate as they could reasonably be ascertained, and that all the other statements and particulars set forth and shewn in the application and sketch or plan are true and correct."

The claimant can and must, therefore, satisfy himself, not by guess-work, but by personal knowledge, and before he makes his affidavit, that the Act has been complied with.

I agree with the conclusion reached that the lands are unsurveyed. Having regard to the provision in the instructions that claims must be twenty acres, sec. 51 can only apply to lands which have been surveyed into 640 and 320 acres (clauses (c) and (d)), and to lands unsurveyed.

In both of these cases claims limited to this area are to be staked. The instructions appended to the order in council opening the lands in question to prospecting and staking distinguish between the "claims or locations already surveyed" and "claims on the blocks which have not been subdivided;" and all three claims in question here are part of block 2.

The main appeal of the appellant Armstrong should be dismissed with costs. His appeal against Johnson's claim is brought by him as a licensee under sec. 63. I can see no ground for interfering with the learned Mining Commissioner's decision in favour of Johnson, who appears to have complied with all the requirements of the Mining Act; and I think this appeal should also be dismissed with costs.