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DIVISIONAL COURT.

AUGUST 9TH, 1912.

RE CLARKSON v. WISHART, AND TWO OTHER CASES.

3 O. W. N. 1645; O. L. R.

*Mines and Minerals—Execution—Interest in Unpatented Mining Claim
—Certificate of Record Issued—Not Exigible under Execution.*

DIVISIONAL COURT held that an interest in an unpatented mining claim for which a certificate of record had been issued under The Mines Act cannot be seized nor sold by a sheriff under a writ of execution.

Reilly v. Doucette, 19 O. W. R. 51; 2 O. W. N. 1053, followed. Judgment of Mining Comr. affirmed.

Per RIDDELL, J.—"A tenancy at will is not exigible."

"The intention of the Mines Act is to leave the paramount power of dealing with the land in the Crown until the issue of the patent and consequently the holder of a certificate of record is made a tenant-at-will.

Review of authorities.

An appeal from a judgment of the Mining Commissioner in three cases, which are treated as one, the same points for decision arising in each case.

J. W. Bain, K.C., and M. L. Gordon, for appellant.

J. M. Godfrey, for respondent, Wishart.

HON. MR. JUSTICE RIDDELL:—One Wishart was the holder of an undivided interest in a mining claim for which a certificate of record had issued, but which had not been patented, nor was the patent applied for nor the purchase money paid. Judgment having been obtained against him by Clarkson, and a writ of *fi. fa.* issued the judgment creditor took proceedings before the Mining Commissioner to be declared entitled to the interest of Wishart in the mining claim (sec. 72 (2)). This application the Mining Commissioner refused.