

lant's claim to discovery of minerals in place in a portion of land staked by the appellant in the Gillies limit, and directing that the claim of George Johnston be recorded upon his staking.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

W. R. Smyth, K.C., for the appellant.

A. G. Slaght, for the respondent.

The judgment of the Court was delivered by HODGINS, J.A.:—It was gravely argued before this Court that an affidavit which the appellant did not know to be true, when sworn to, was unexceptionable, if afterwards it was found that the facts stated had been correctly guessed at. . . . This is a new departure in affidavit-making, and, if accepted, would simplify the acquisition of claims by allowing a prospector who finds valuable mineral in place to quit the ground, and, having left others to do the staking, make the necessary affidavit in the pious hope that their work will justify the oath upon which he secures his claim.

Apart from the morality or immorality of the suggestion, and leaving aside for the moment the words of the Mining Act, there are two reasons which plainly render any such method of dealing with the requisite oath impossible.

It would enable a prospector to blanket claims and permit him, if he were sufficiently active, to go back upon the ground and stake out claims to correspond—a reversal of the universal practice, as I understand it, of taking up mining claims.

Secondly, if the registration is attacked, and it is open to the deponent to substitute, for his original statement, proof by others that that of which he was ignorant was by a happy chance true, then he displaces his own affidavit as proof and relies on what the statute does not admit as primary evidence to secure the claim. He thus holds his position against others until he can get the proof, or, if there is no contest, then he shuts out others by a device not permitted by the Mining Act.

Best, in his work on evidence, 11th ed., p. 43, puts upon the same plane as perjury a statement which the witness knows to be false and one of which he know himself to be ignorant.

The Mining Act does not permit the affidavit to be made on information and belief—no doubt because the statements are intended to be made by one who can speak at first hand, and