

by leave under sec. 151 (4) of the Mining Act of Ontario, 8 Edw. VII. ch. 21.

The dispute related to a mining claim in the township of Lorrain, recorded in the office of the Mining Recorder on the 7th January, 1908, by one Montgomery, the holder of a mining license. In the application, after describing the parcel and referring to the situation of the discovery post, it was stated that the discovery was made on the 21st December, 1907, and the claim was staked and the lines cut and blazed on the claim on that day.

On the 23rd May, 1908, Montgomery, being still the holder of a mining license, transferred all his interest in the claim to Hill, who was the holder of a mining license. This transfer was filed in the Recorder's office on the 12th June, 1908. On the 28th June, 1908, an application for the staking of a claim on the same location was filed in the Recorder's office on behalf of Smith, and on the same day a dispute of Hill's claim was filed on behalf of Smith under sec. 63 of the Act, which had come into force on the 14th April, 1908.

The Recorder, acting under sec. 130 (2) of the Act, transferred to the Commissioner, with his consent, the questions raised by these proceedings for his decision.

The Commissioner decided in favour of Hill, and, a new trial being directed (see 12 O. W. R. 1258), again decided in favour of Hill, whereupon Smith appealed.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

G. T. Blackstock, K.C., and C. C. Robinson, for the appellant.

G. H. Watson, K.C., and J. L. McDougal, for the respondent.

Moss, C.J.O.:—The first question for consideration relates to Smith's status to dispute Hill's claim and to appeal to this Court. . . In *Re Cashman and Cobalt and James Mines Limited*, 10 O. W. R. 658, and *Re Munro and Downey*, 19 O. L. R. 249, the rights of the parties were governed by the Mines Act, 1906, as amended by 7 Edw. VII. ch. 13. In this case, while those enactments apply to the discovery, staking, etc., made or alleged to be made by Montgomery, the Mining Act of Ontario is applicable to all the subsequent proceedings, and reference must be made to its enactments when dealing with the question of status. The language is not the same as in the former enactments, some of the changes probably owing their origin to the Cashman case. Sec-