

DIVISIONAL COURT.

AUGUST 9TH, 1912.

*RE CLARKSON AND WISHART.

Execution—Interest of Certificated Holder of Mining Claim before Patent—Seizure and Sale by Sheriff under Fi. Fa. Goods—Mining Act of Ontario, 1908—Licensee—Tenant at Will—Profit à Prendre—Fi. Fa. Lands—Position of Execution Creditor and Purchaser at Sheriff's Sale—Application for Record.

An appeal from the judgment of the Mining Commissioner in three cases in which the same points arose for decision.

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 (Mining Act of Ontario, 1908, sec. 72(2)). This application the Mining Commissioner refused.

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

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

The execution creditor, Clarkson, and the purchaser at the Sheriff's sale, Forgie, appealed.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

J. W. Bain, K.C., and M. L. Gordon, for the appellants.
J. M. Godfrey, for Wishart.

RIDDELL, J.:—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. V. ch. 8, sec. 7.

*To be reported in the Ontario Law Reports.