

and declaring Eliza Saville was entitled to be recorded as the holder of two mining claims in the mining district of Sudbury.

The appeal to Divisional Court was heard by HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., HON. MR. JUSTICE BRITTON, and HON. MR. JUSTICE RIDDELL.

J. W. Bain, K.C., and M. Lockhart Gordon, for Sanderson.

G. F. Shepley, K.C., and H. S. White, contra.

HON. MR. JUSTICE RIDDELL:—In this appeal from the Mining Commissioners there are several matters to be considered, one of them a matter of law of considerable importance though susceptible of short and simple statement.

Sanderson, who was the holder of a mining license, being at a distance from the Recorder's office, failed to have his license renewed before the 1st of April, 1911, but he went on, and on April 21st made a discovery and staked two claims. He later on and on April 24th had his license renewed under sec. 85 (1) (a) of the Mining Act: the Mining Commissioner holds that he can acquire no rights by such a discovery and staking.

The Act provides sec. 22 (1) that "no person . . . not the holder of a miner's license shall prospect for minerals upon Crown lands, etc., or stake out, record or acquire any right or interest therein." Sec. 176 (1) provides: "Every person who prospects . . . or acquires any unpatented mining claims . . . or lands . . . for minerals otherwise than in accordance with the provisions of this Act or 6 Edw. VII. ch. 11, sec. 103 . . . shall be guilty of an offence against this Act and shall incur a penalty not exceeding \$20 a day . . . and upon conviction thereof shall be liable to imprisonment for a period not exceeding three months unless the penalty and costs are sooner paid." Sec 181 (1) directs the prosecution before a police magistrate or justice of the peace, the Commissioner, or a Recorder. This express provision excludes the application of sec. 164 of the Criminal Code: but the offence is none the less a crime. If for any reason sec. 164 of the Code does apply then the Act was a crime quite beyond question. "*Nullus commodum capere potest de injuria sua propria*," and "*Nul prendra avantage de son tort dmesne*" (2 Inst. 713); "*Nemo ex suo delicto meliorem*