

The Ontario Weekly Notes

Vol. I.

TORONTO, AUGUST 10, 1910.

No. 46.

HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

JULY 29TH, 1910.

RE WRIGHT AND COLEMAN DEVELOPMENT CO.

Mines and Minerals—Claim of Discovery not Recorded in Due Time—Refusal of Mining Recorder to Receive—Claim already Recorded—Re-staking—Abandonment—Claim Resting on Original Discovery—Benefit of Discovery made by Employee—Supplies of Employer Used in Work—Assistance from Employees after Hours.

Appeal by the Coleman Development Company from the judgment of the Mining Commissioner, dated the 14th July, 1909, made in pursuance of an order of the Court of Appeal, dated the 5th April, 1909, 13 O. W. R. 900, reversing a previous judgment of the Mining Commissioner and the order of a Divisional Court, 12 O. W. R. 248, and remitting the matter for trial by the Mining Commissioner, who was directed to add the respondent Sharpe as a party and "to determine all claims, questions, and disputes of the mining claim in question and the rights, title, and interest therein of the parties, or any of them."

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and SUTHERLAND, JJ.

W. M. Douglas, K.C., for the appellants.

J. Shilton, for the respondents.

The judgment of the Court was delivered by MEREDITH, C.J.:—Practically the only question to be determined is, whether or not the appellants are entitled to the benefit of the discovery under which the respondents claim.

The Mining Commissioner has found, and we see no reason for differing from his conclusion, that the only real discovery was that made by the respondent Wright on the 16th July, 1906.