

OCTOBER 29TH, 1907.

DIVISIONAL COURT.

RE RODD.

*Mines and Minerals — Appeal from Decision of Mining Commissioner — Evidence — Re-inspection—Ex Parte Report of Government Inspector — Finding of Commissioner — Duty of Appellate Court.*

An appeal by J. H. Rodd from the decision of the Mining Commissioner cancelling the appellant's mining claim.

L. G. McCarthy, K. C., for the appellant.

J. R. Cartwright, K. C., for the Commissioner.

The judgment of the Court (FALCONBRIDGE, C.J., BRITTON, J., RIDDELL, J.), was delivered by

RIDDELL, J.:—The learned Commissioner in his written reasons for judgment says that, after hearing the evidence adduced and deeming it unsatisfactory as regards the merits of the discovery, and the circumstances disclosed regarding the nature of the samples being such as to lead him to believe that they were not samples which had been wholly found upon the claim, "and there being in fact nothing else whatever shewn in connection with the discovery which any one having the least experience in such cases could think of accepting as to any extent establishing a discovery," he directed a re-inspection by another government inspector. He then goes on to say that the report of this inspector shews the alleged discovery to be worthless.

Mr. McCarthy, for the appellant, pressed us with an argument that it was contrary to natural justice to allow the report of an inspector who was not subjected to cross-examination to determine the judgment of the Mining Commissioner; and be offered to pay the expense of a further inspection, if the Court would direct that the matter should go back for further evidence or a new trial.