the same Act, and fined $100 and costs, and in default of payment to be imprisoned for 80 days. A warrant of commitment was issued on 18th July, 1896. He was arrested on the 29th January, 1896, under the first warrant, and after 80 days imprisonment was discharged. On 8th September, 1896, he was arrested on the second warrant. An application was now made for his discharge on the ground that as the imprisonments were not expressed to be cumulative, they must be taken to have been concurrent by virtue of sec. 877 of the Criminal Code.

BARKER, J., in refusing the application, said there was an important distinction between the case of an offence for which the justice awards imprisonment as a punishment and one for which a penalty can only be imposed, and where the imprisonment is merely a means of enforcing payment of the penalty. Under sec. 100 of the C. T. Act any person violating the provisions of the second part of the Act is liable for the first and second offence to a fine, and it is only for the purpose of enforcing payment that imprisonment is awarded. In this respect the case was to be distinguished from *Reg.* v. *Cutbush*, L. R. 2 Q.B. 379, and *Castro* v. *The Queen*, 6 App. Cas. 229. He referred to s-s. 872, 877 and 880 of the Criminal Code as recognizing this distinction. As the prisoner when in custody under the first warrant was not undergoing punishment, his imprisonment could not be said to refer to the second offence.

R. LeB. Tweedie, for the application.

F. A. McCully, contra.

Province of British Columbia.

SUPREME COURT.

DAVIE, C.J.] [June 26.

NELSON & FORT SHEPPARD RAILWAY CO. *v.* JERRY.

Mineral claim—Abandonment— Rock in place—Certificate of improvements—Bond.

The plaintiff company received a grant of public land in aid of its railway, and in this action sued for possession of certain lands comprised within its grant, to which the defendants claimed title under locations as mineral claims.

Held, 1. That a mineral claim when abandoned immediately reverts to the Crown.

2. That "rock in place" means rock mineralized sufficiently to work profitably.

3. That a certificate of improvements does not displace previously acquired surface rights.

4. That where ground is already occupied a location is invalid if no bond for damages is given by the locator.