

The objection to the position of McNeil is very simple. It is said that at the time (13th January, 1908) the discovery and staking were made by him, there were the two Plotke applications and the McCully application pending—that the affidavit of discovery (form 14) contains, added at the end of paragraph 2, the words “except applications 10263 and 10332 1-2, the validity of which I have disputed.”

It is said that the provisions of sec. 157 have not been complied with, and that the affidavit is not sufficient. The case of *Re Isa Mining Co. and Francey*, 10 O. W. R. 31, is relied upon in support of that contention. In that case the appellant was an applicant for a working permit; he was by the legislation then in force, (1906) 6 Edw. VII. ch. 11, sec. 141 (11), required to swear “that the land at the time of its being staked out was not in occupation or possession or or being prospected for minerals by any other licensee, and that (he) has no knowledge and had never heard of any adverse claim by reason of prior discovery or otherwise.” It was in that state of the law that the affidavit of the applicant was made, and the Court held that the affidavit “not only did not negative the matters required to be negated, but shewed that there were adverse claims and the knowledge of the applicant of the existence of them.” 10 O. W. R. at p. 32.

The stringency of the provision just referred to was much relaxed by the statute of 1907, 7 Edw. VII. ch. 13, sec. 39, which was passed a few days before the decision in the *Isa* case; and even the later provision is not precisely the same as that for a mining claim.

The former provision for the case of a mining claim was found in sec. 157 of the Act of 1906—the affidavit filed for the applicant must shew “that the deponent has no knowledge and has never heard of any adverse claim by reason of prior discovery or otherwise.” The Act of 1907 changes this to read “at the time of staking out . . . there was nothing on the lands to indicate that they were not open to be staked out for a mining claim under this Act, and that the deponent verily believes they were so open, and that the applicant is entitled under the provisions of this Act to be recorded for the claim.”

The *Isa* case is not conclusive against McNeil, by reason of the different wording of the sections. It must, however, I think, be obvious that the mere swearing and filing of an affidavit in the exact words of the section would not be effec-