

where the same subject has not been adjudicated, although such former actions may have been between the same parties and concerning the same estate.

*Kennedy v. Kennedy*, 11 D.L.R. 328, affirmed.

*E. Douglas Armour*, K.C., for appellant. *S. O. Buckmaster*, K.C., for David Kennedy, Robert Kennedy, and Joseph H. Kennedy. *A. J. Russell Snow*, K.C., for Madeline Kennedy.

Lords Atkinson, Shaw, Moulton.]

[13 D.L.R. 730.

CLARKSON v. WISHART.

*Mines and minerals—Levy and seizure—Mining claims, unpatented—Exigibility—Interest—Lands.*

The interest of a mining claimant in an unpatented claim duly recorded under the provisions of secs. 34, 35, 53, 59 and 64 of the Mining Act, 8 Edw. VII. (Ont.), ch. 21, R.S.O. 1914, ch. 32, is exigible for a judgment debt due by the claimant.

*Re Clarkson and Wishart*, 6 D.L.R. 579, 27 O.L.R. 70, reversed; *McPherson v. Temiskaming Lumber Co.*, 9 D.L.R. 726, [1913] A.C. 145; and *Glenwood Lumber Co. v. Phillips*, [1904] A.C. 405, applied.

While the issue of a certificate of record to a claimant in an unpatented mining claim is declared by sec. 68 of the Mining Act, 8 Edw. VII. (Ont.), ch. 21, R.S.O. 1914, ch. 32, to create a tenancy at will as between the claimant and the Crown, such reference must be taken in conjunction with the other provisions of the statute in determining what is exigible under execution at the instance of a judgment creditor of the claimant, and the effect is that, notwithstanding such declaration, substantial rights are vested in the claimant which come within the word "lands" as used in the Execution Act (Ont.), 9 Edw. VII., ch. 47, R.S.O. 1914, ch. 80.

*Re Clarkson and Wishart*, 6 D.L.R. 579, 27 O.L.R. 70, reversed; *McPherson v. Temiskaming Lumber Co.*, 9 D.L.R. 726, [1913] A.C. 145; and *Glenwood Lumber Co. v. Phillips*, [1904] A.C. 405, specially referred to.

*Sir Robert Finlay*, K.C., and *Archibald Read*, for appellants. *J. M. Godfrey*, for respondents.