

The appeal was heard by MEREDITH, C.J.C.P., FERGUSON, J.A., RIDDELL AND ROSE, JJ.

T. Hislop, for the appellants.

R. S. Robertson, for the defendants, respondents.

THE COURT dismissed the appeal with costs.

SECOND DIVISIONAL COURT.

JANUARY 17TH, 1917.

RE NEILLY AND LESSARD.

*Mines and Mining—Mining Claims—Staking out—Conflicting Boundaries—Mining Act of Ontario, R.S.O. 1914 ch. 32, secs. 51 et seq.—Imperative Requirements—Sec. 59 (5) (4 Geo. V. ch. 14, sec. 2)—Meaning of.*

Appeal by Felix Lessard and others from a decision and order of the Mining Commissioner upon a confliction of boundary-lines between mining claim C-1009, being the south-west quarter of the east half of the south-west quarter, block 2, Gillies limit, in the Temiskaming mining division, and mining claim C-940, being the north-east quarter of the east half of the south-west quarter of the same block 2.

Balmer Neilly, in his application to record claim C-940, applied for the north-east quarter of the east half, with his eastern and western boundaries 20 chains and his northern and southern boundaries 10 chains each, and stated that a discovery had been made upon the said lands at one second after 12 o'clock on the 20th August, 1912.

Felix Lessard staked and applied for C-1009 on the 20th August, 1912, and made a discovery at 12.05 a.m. on the same day. In his application to record, he described the lands staked as being the south-west quarter of the east half, the outlines being 10 by 20 chains.

Upon a survey of the two claims being made, it appeared that part of the northern boundary of C-1009 extended over and above C-940 at the south-east quarter thereof to the extent of half an acre or thereabouts.

The Mining Commissioner, in written reasons for his decision, said that neither party had strictly complied with the requirements of the Mining Act, R.S.O. 1914 ch. 32, and neither had