1940

* Feb. 6, 7.
* Nov. 6.

E. SWAIN AND OTHERS (RESPONDENTS) ... APPELLANTS;

AND

HIS MAJESTY THE KING, EX RELATIONE ADOLPH STUDER (PROSECUTOR) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Mines and minerals—Lapse and reinstatement of claims—Conditions of—Mineral claims staked and subsequently forfeited—Order of reinstatement by the Minister—Right of intervening applicant, who had restaked same claims, to mandamus to compel recording of his application by Mining Recorder—The Mineral Resources Act, 1931, c. 16, s. 10, 22 and Regulations 39, 54, 55, 66, 132.

* PRESENT:—Rinfret, Crocket, Davis, Kerwin and Hudson JJ.

Some mineral claims were, in 1937, staked and recorded and subsequently transferred into the name of Mun Syndicate, one of the appellants. By reason of the failure of the latter to comply with the conditions prescribed by the regulations under *The Mineral Resources Act* of Saskatchewan, these claims had become forfeited in the summer of 1938 and were thus open for restaking. Later, in the month of September, 1938, the prosecutor Studer, associated with two others, all of whom held miners' licences, restaked the claims; and applications by them to have the claims recorded in their names, together with assignments thereof by his associates to him, were filed on October 12th, 1938, at the sub-recording office at Prince Albert and the necessary fee was paid. These applications reached the mining recorder at Regina on October 13th, 1938. The pertinent regulation provides that the date upon which the documents are "received in the office of the mining recorder shall govern, and shall be considered the date of the application." Meanwhile, the Mun Syndicate had become active and had secured from the Minister on October 11th, 1938, an order under section 22 of the Act and section 66 of the regulations, reviving their claims to the property. The order of reinstatement expressly stated that it was subject to section 22, which provides that the revesting of rights which have been forfeited or lost shall be subject to the rights intervening between the default and the order of the Minister. This order was then recorded, so that, when Studer's application arrived at the Mining Recorder's Office, the situation was that the Mun Syndicate again stood in the record as the holders of the claim in good standing, subject only to the conditions specified. The Mining Recorder, now the appellant Swain, rejected the applications of the prosecutor Studer on the ground already stated that the prior holders had been reinstated on October 11th, 1938. The prosecutor Studer then applied for a prerogative writ of *mandamus* to compel the appellant Swain, Mining Recorder, to record and enter the name of Studer as holder of the mineral claims in question, his expressed object being to obtain a record of his claims so that he would have the necessary status to maintain an action, against the reinstated claimants, to establish his rights. The trial judge granted the order applied for, which judgment was affirmed by a majority of the Court of Appeal.

Held, Davis and Kerwin JJ. dissenting, that the appeal should be allowed, the judgments of the courts below be set aside, and the writ of *mandamus* discharged, but, under the circumstances of the case, without costs to any party.

Per Rinfret, Crocket and Hudson JJ.—The remedy sought on behalf of Studer was to compel the Recorder in his official quality to record his name as holder of the mineral claims, that is, to do a ministerial act, not to decide a dispute, much less to rule on the legality or propriety of an act of his Minister. The motion for *mandamus* was based on the assumption that Studer would not have an adequate remedy in an action commenced by writ, until he had been first duly recorded as a holder, which assumption has found acceptance in the courts below. But there is no reason in principle why a lack of entry of Studer's name should be a bar to an ordinary action to enforce any such rights as he is entitled to in the matter. Such rights were the very kind of rights which were intended to be preserved by section 22 of the *Mineral Resources Act,* and were preserved by the order of the Minister.

1940

SWAIN
v.
THE KING
ex rel
STUDER.

Per Davis J. (dissenting).—The only remedy sought by the respondent Studer in this case was to have recorded in his name in the books of the Mining Recorder the restaking by him, or by those under whom he claimed, of the mining lands in question in this case, and Studer was entitled to such a remedy. These claims had become forfeited due to the absence of any record of the necessary assessment work required to keep the claims alive, subject to the provisions of section 22 of the statute. But the restaking or relocation was done by Studer after the default and before the order had been made under that section by the Minister. At least fifteen days were made available by the regulations for recording that staking and the fifteen days had not elapsed before the date of the Minister's order. Therefore, notwithstanding the Minister's order relieving against the forfeiture, the restaking of the claims in the interval entitle the licensee Studer to have a record of the staking made in the Recorder's Office. The order of the Minister was not only on its face but by the force of section 22 of the statute subject to that intervening right, while the refusal to record the staking was definitely put by the Mining Recorder upon the ground that "the former claims covering the same area had been reinstated."

Per Kerwin J. (dissenting)—The respondent Studer, having staked claims that were at the time open, could not, under the circumstances, litigate his rights as against the members of the Mun Syndicate without first acquiring a record. Studer could not do this unless it is held that the Mining Recorder had no discretion to decline to receive the application and record it. In view of the fact that the claims were open and the staking done by the respondent Studer before the order was made by the Minister, section 22 of the statute applies, and the interest or rights forfeited or lost are to be revested in the person so relieved, "but subject, however, to any intervening right of any person arising subsequent to the default sought to be remedied and prior to the order of the Minister." The order of the Court of Appeal, granting respondent Studer's application for *mandamus* and thus affording him the opportunity to litigate the rights he claimed, should be upheld.

Osborne v. *Morgan* (13 App. Cas. 227), *Hartley* v. *Maston* (32 Can. S.C.R. 644); *Mutchmore* v. *Davis* (14 Grant 346); *Farmer* v. *Livingstone* (8 Can. S.C.R. 140); *McPhee* v. *Box* ([1937] S.C.R. 385); *Re Massey Mfg. Co.* (13 Ont. A.R. 446) and *Minister of Finance of B.C.* v. *Andler* ([1935] S.C.R. 278) discussed.

APPEAL from a judgment of the Court of Appeal for Saskatchewan (1), affirming a judgment of the trial judge, Embury J. (2) and granting an application for a prerogative writ of *mandamus* to compel the appellant Swain, Supervisor of Mines and Mining Recorder for the province of Saskatchewan, to record and enter in the name of the respondent Studer eight applications for the record of mineral claims.

(1) [1939] 2 W.W.R. 401. (2) [1939] 1 W.W.R. 705.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgments now reported.

J. E. Doerr K.C. for the appellants.

J. G. Diefenbaker K.C. for the respondent Studer.

E. G. Gowling for the respondent The Mun Syndicate.

The judgment of Rinfret, Crocket and Hudson JJ. was delivered by

HUDSON J.—In this case a motion was made on behalf of the prosecutor Studer before Mr. Justice Embury, for a *mandamus* requiring the appellant Swain, a Supervisor of Mines and Mining Recorder for Saskatchewan, to record and enter in the name of Studer the eight mineral claims in question. Mr. Justice Embury granted the order applied for, with one qualification, which in the view I take of this matter need not be discussed.

On appeal, the Court of Appeal, by a majority of two to one, decided that the *mandamus* should issue without any such qualification. It is from that decision that the present appeal is brought.

It is desirable here to make clear exactly what aid was sought on behalf of Studer. It was to compel the Recorder in his official capacity to record the name of Studer as holder of these claims, that is, to do a ministerial act, not to decide a dispute, much less to rule on the legality or propriety of an act of his Minister. It was simply to enter Studer's name in the record as holder. This is the position taken on behalf of the prosecutor in the court below, as pointed out by Chief Justice Turgeon:

> No relief is claimed against any person other than the Mining Recorder and the only claim of the respondent is that the Mining Recorder be compelled to discharge the legal obligation resting upon him; and that the respondent have executed in his favour, those public duties to which he has a legal right.
>
> It again becomes necessary to point out that the nature of relief prayed for in the present instance is relief against the Mining Recorder, and against the Mining Recorder only. The other parties are joined merely for the purpose of giving them notice of the proceedings.

The position taken before this Court is substantially the same.

The material facts relevant to this issue may be stated briefly. In 1937, the claims in question had been staked

1940
SWAIN
v.
THE KING
ex rel
STUDER.
Hudson J.

and recorded and subsequently transferred into the name of Mun Syndicate, parties to these proceedings. By reason of the failure of Mun Syndicate to comply with the conditions prescribed by the regulations, the claims had become forfeited in the summer of 1938. During the time when these claims were still in good standing, Studer had something to do with them and was quite familiar with the property. Later, in the month of September, he, Studer, satisfied himself that the forfeiture had taken place and that the claims were open for staking. He then proceeded, associated with two others, all of whom held Miners' Licences, to restake these claims, and the rights of the others were subsequently transferred to him. On October 3rd, 1938, the Mining Recorder advised him by letter as follows:—

> Concerning the mineral claims named "Contact" and "Golden Bean Nos. 1 to 16, inclusive," these have now all lapsed and are, therefore, available to the first eligible applicant, so that if you want them and providing they have not already been staked you should go ahead to secure such of this property as you deem necessary to round out your holdings.

On October 12th, 1938, Studer presented at the office of the District Superintendent of Mines at Prince Albert an application to have the claims recorded in his name and paid the necessary fee. This was accepted by the District Superintendent but Mining Regulation 45 provides:

> The record of a mineral claim shall be made at the office of the Mining Recorder, but the application may be made to a district superintendent or a sub-recorder, to be forwarded to the mining recorder. The date upon which the application and the fee may be received in the office of the mining recorder, however, shall govern, and shall be considered the date of the application.

The duty of the District Superintendent was to forward Studer's application to the office of the Recorder at Regina, and this was done.

Meanwhile, the Mun Syndicate had become active and had secured from the Minister on October 11th, an order reviving their claims to the property in the following language:

> Pursuant to the power vested in me by authority of Section 66 of the Quartz Mining Regulations, under The Mineral Resources Act, I do hereby order that the Mineral Claims known as "Contact Nos. 1, 2, 3 and 4" be reinstated and the rights forfeited be revested in the former owner subject to Section 22 of The Mineral Resources Act.

A similar order was made in respect of the other claims now in question in this matter. Section 22 of the Act provided that any such reinstatement was to be subject to any intervening right of any person arising subsequent to the default sought to be remedied and prior to the order of the Minister.

This order of the Minister was then recorded; so the position when Studer's application arrived at the Mining Recorder's office was that the Mun Syndicate again stood in the record as the holders of the claims in good standing, subject only to the conditions specified. Studer was advised of this position and, after some correspondence, the present proceedings were commenced.

Neither the statute nor the regulations, as I read them, make any provision for placing in the register at the same time the names of two persons with competitive claims, and I agree with the views of Chief Justice Turgeon, that a reading of all of the rules make it quite clear that such was never the intention.

The motion for *mandamus* is based on the assumption that Studer would not have an adequate remedy in an action commenced by writ, until he had been first duly recorded as a holder. This assumption has found acceptance in the court below. It is based on a number of decisions following that of the Judicial Committee in *Osborne* v. *Morgan* (1). The head-note in the report of that decision is as follows:—

> In an action by the holders of "miners' rights" issued to them under the Gold Fields Act 1874 and regulations made thereunder, to set aside the defendants' mining leases also thereunder granted on the grounds (1) that they had been granted contrary to sect. 11 within two years from the proclamation of the goldfield within which the leased areas were contained; (2) that the formalities prescribed by the regulations had not been observed by the defendants when applying therefor:—
>
> Held, that neither under the Act nor otherwise had the plaintiffs any right to interfere with the lessees' possession. Sect. 9 gave them no rights whatever as against lands let by the Crown, and no title to try the validity of Crown leases relating thereto; and the whole tenor of the regulations is opposed to such contention.

The miners' rights, which were all that the plaintiffs held, corresponded with the mining licence held by Studer in the present case. It gave a right to the holder to stake, occupy and work mining properties owned by the Crown, subject to regulations. It did not refer to any specific

(1) (1888) 13 App. Cas. 227.

1940
SWAIN
v.
THE KING
ex rel
STUDER.
Hudson J.

land. The defendants had a lease from the Crown and were in possession and working the property. The plaintiffs alleged that this lease was invalid and improperly held and that, therefore, the property should be open to them to stake and brought their action on this basis. The Judicial Committee said that under these circumstances the plaintiffs had no status to attack the defendants' title.

The circumstances in that case were of course very different from the position here. According to Studer's claim, the Mun Syndicate were neither in actual nor in constructive possession at the time. Their right to be there had been forfeited, and while this continued he, Studer, was rightfully entitled to enter on the land and stake it according to the regulations, and he so did and duly presented an application within the time prescribed by such regulations. The only reason why his application was not accepted was that the Mun Syndicate had meanwhile been restored to the record as holder, subject to intervening rights.

The case of *Hartley* v. *Maston* (1) was decided on the authority of *Osborne* v. *Morgan* (2). The facts were very similar. The defendants there had a hydraulic lease of mineral lands in existence and they were in occupation of the land. The plaintiffs entered upon the lands and staked claims and, in their action, alleged that the hydraulic mining lease was invalid. Mr. Justice Davies, who gave the principal judgment in the case, said at page 647:

> I agree substantially with the judgment of the Gold Commissioner, Mr. Senkler. I do not think that the mere fact of the appellants, as free miners, entering upon lands already leased by the Crown and professing to locate claims there gave them any right or interest in the lands, or any status to come into court and ask for any declaration with respect to the validity of a prior lease from the Crown of those very lands.
>
> To attain such a status mere "staking" is not sufficient. They must go further and obtain from the mining recorder their placer grants.

In the judgment of Mr. Senkler, approved of by Mr. Justice Davies, Mr. Senkler says:—

> It appears in this case that the appellants entered upon the lands occupied by the respondents under a lease from the Minister of the Interior. They had no right to do this, and their right to bring this protest is based upon the fact that they are free miners only and the fact of their being free miners does not carry with it any legal or equitable interest in the ground in dispute.

(1) (1902) 32 Can. S.C.R. 644. (2) (1888) 13 App. Cas. 227.

He followed the decision in *Osborne* v. *Morgan* (1), and further referred to the cases of *Mutchmore* v. *Davis* (2), and *Farmer* v. *Livingstone* (3). The present case is distinguishable from that of *Hartley* v. *Maston* (4) for the same reason as from that of *Osborne* v. *Morgan* (1). The determining facts in both of those cases were possession by, and priority of title in, the defendants.

In *McPhee* v. *Box* (5), the facts were somewhat similar, although not identical with those in the present case, and there this Court refused to grant a *mandamus*. The question under immediate discussion here was left open.

I can see no reason in principle why a lack of entry of Studer's name should be a bar to an ordinary action to enforce any such rights as he is entitled to in the matter. Such rights were the very kind of rights which were intended to be preserved by section 22 of the *Mineral Resources Act,* and were preserved by the order of the Minister.

I concur in the views expressed in the court below that the proper authorities should consider the advisability of clarifying the regulations.

I would allow the appeal and set aside the judgments below and discharge the writ of *mandamus* but, under the circumstances, without costs to any party.

DAVIS J. (dissenting)—The relator Adolph Studer became entitled to have recorded in his name on the books of the Mining Recorder the staking of the mining lands in question. The contention of the appellants that *mandamus* cannot lie against the Mining Recorder because he is a servant of the Crown is untenable. The Mining Recorder is in a sense a servant of the Crown but his duties are purely ministerial; they involve nothing in the nature of an executive act. He is, in the relevant sense, an agent of the statute to do the things that he is by the statute directed to do, and *mandamus* may properly be directed to him. See *Re Massey Mfg. Co.* (6); *Minister of Finance of B.C.* v. *Andler et al.* (7).

(1) (1888) 13 App. Cas. 227.
(2) (1868) 14 Grant 346.
(3) (1882) 8 Can. S.C.R. 140.
(4) (1902) 32 Can. S.C.R. 644.
(5) [1937] S.C.R. 385.
(6) (1886) 13 Ont. A.R. 446, at 452.
(7) [1935] S.C.R. 278, at 284, 285.

1940

SWAIN
v.
THE KING
ex rel
STUDER.

Davis J.

The mining claims in question had theretofore become forfeited due to the absence of any record of the necessary assessment work required to keep the claims alive. It may not be a strict forfeiture but rather a qualified forfeiture because the statute provides that the holder of a mining claim which has thus become forfeited may within a certain delay obtain relief from the forfeiture and the reinstatement of his claims upon proof that the necessary assessment work has been done. Sec. 22 of *The Mineral Resources Act,* 1931 (ch. 16 of the 1931 Saskatchewan Statutes) is the governing provision and that section is as follows:

> 22. Where forfeiture or loss of rights has occurred, the minister may, within three months after the default or within such further time as the Lieutenant-Governor in Council upon the recommendation of the minister may direct, upon such terms as he deems just, make an order relieving the person in default from such forfeiture or loss of rights, and upon compliance with the terms, if any, so imposed, the interests or rights forfeited or lost shall be revested in the person so relieved, but subject however, to any intervening right of any person arising subsequent to the default sought to be remedied and prior to the order of the Minister.

Now the regulations provide (No. 39) that

> Within fifteen days after a mineral claim has been staked out by a licensee, either on his own behalf or on behalf of another licensee, application for a record of such claim shall be made to the mining recorder, * * *

subject to certain extensions of time having regard to distance; and then by Regulation 54 (1) any licensee

> having duly located and recorded a mineral claim, shall be entitled to hold it for a period of one year, and thence from year to year without the necessity for re-recording * * *

subject to the performance of certain work on the claim. If the amount of the required assessment work is not done and duly recorded within the period of one year, plus a month of grace thereafter, then by Regulation No. 55

> the claim shall lapse, and shall forthwith be open to relocation under these regulations, without any declaration of cancellation or forfeiture on the part of the Crown, subject, however, to the provisions of section 66 of these regulations.

By Regulation No. 66 the Minister may, within three months after such default has occurred, upon such terms as he may deem just, make an order relieving the person in default from such forfeiture or loss of rights.

It may be noted here that the power of the Lieutenant-Governor in Council from time to time to make regulations and orders is limited (by sec. 10 of the statute) to

> such regulations and orders not inconsistent with this Act as are necessary to carry out its provisions according to their obvious intent or to meet cases which may arise and for which no provision is made therein * * *

We must therefore go back to sec. 22 of the statute itself, which stipulates that if forfeiture or loss of rights is relieved against by the Minister, the interests or rights forfeited or lost shall be "revested" in the person so relieved,

> but subject, however, to any intervening right of any person arising subsequent to the default sought to be remedied and prior to the order of the minister.

In this case the restaking or relocation was done after the default and before the order had been made by the Minister. At least fifteen days were made available by the regulations for recording that staking and the fifteen days had not elapsed before the date of the Minister's order. Therefore, notwithstanding the Minister's order relieving against the forfeiture, the restaking of the claims in the interval entitled the licensee to have a record of the staking made in the Recorder's Office. The order of the Minister was not only on its face but by the force of sec. 22 of the statute subject to that intervening right. The refusal to record the staking was definitely put by the Mining Recorder upon the ground that "the former claims covering the same area had been reinstated." The orders of the Minister covering the reinstatement of the several claims, signed by the Deputy Minister, read as follows:

> Pursuant to the power vested in me by authority of Section 66 of the Quartz Mining Regulations, under *The Mineral Resources Act*, I do hereby order that the Mineral Claims known as * * * be reinstated and the rights forfeited be revested in the former owner, subject to Section 22 of *The Mineral Resources Act*.

All that the respondent has sought in these proceedings is to have the restaking by him, or by those under whom he claims, recorded. He is faced with the difficulty that a mere staker of mineral claims may not have a status to assert his claims to the properties until he gets himself on the Record. That difficulty is envisaged as the result of some words by Davies J. in *Hartley* v. *Matson* (1):

(1) (1902) 32 Can. S.C.R. 644, at foot of 647.

1940

SWAIN
v.
THE KING
ex rel
STUDER.

Davis J.

To attain such a status (i.e., to question the validity of a prior lease from the Crown) mere staking is not sufficient. They must go further and obtain from the Mining Recorder their placer grants. If for any reason he refuses to issue such grants then their remedy is by way of *mandamus* to compel him to do his duty. Until they have obtained such grants they are not in a position to attack the defendants' lease.

I see nothing in the objection raised that the respondent had in respect of some of the claims only a transfer of the rights of the licensee or licensees who actually staked some of the properties. They were all licensees entitled to stake but had assigned their rights to the respondent in respect of their particular stakings.

The further objection is taken that the remedy by *mandamus* is not available because of an alternative remedy. Regulation 132 provides that

> any decision of the Mining Engineer, or other officer of the Department, made under any of the provisions of these regulations, shall be subject to an appeal to the Minister.

That regulation however is dealing only with matters of routine departmental decision and was never contemplated to apply to a case such as this.

The order of the Court directing that the record must be made by the Recorder must necessarily be interpreted as made *nunc pro tunc* because the respondent was in time when he made the application which was improperly refused.

In my opinion the appeal should be dismissed.

KERWIN J. (dissenting)—This is an appeal by Mr. E. Swain, Supervisor of Mines for the province of Saskatchewan, the Minister of Natural Resources for the province, and five individuals carrying on a mining syndicate under the name of Mun Syndicate, from the judgment of the Court of Appeal for the province of Saskatchewan. The respondent is His Majesty the King on the relation of Adolph Studer. The proceedings were commenced by Studer applying in the Court of King's Bench of Saskatchewan for a writ of *mandamus* requiring the Supervisor of Mines, who is also the Mining Recorder, to record and enter in Studer's name eight certain mining claims. Mr. Justice Emery, before whom the application came in the first instance, made the order asked, as to certain claims but not as to others. An appeal and cross-appeal being taken from his order, the Court of Appeal directed the

issue of a writ of *mandamus* with reference to the eight claims. The Chief Justice of Saskatchewan, dissenting, would have allowed the appeal and dismissed the application.

Studer desires the issue of the writ in order that he may be recorded as the holder of the claims and thus acquire a status to question the validity of what was done under the following circumstances. The individuals comprising the Mun Syndicate appeared on the record as the owners of the claims (although under different names) but, because of failure to comply with number 54 of the Saskatchewan Regulations for the Disposal of Quartz Mining Claims, the claims lapsed under regulation 55, and in accordance with the provisions of such last-mentioned regulation were "open to relocation" subject to the provisions of regulation 66. Under the latter, the Minister of Natural Resources has power to make an order relieving the person in default.

The respondent, Studer, having ascertained that a lapse had occurred, located the claims and applied, in due form, for registration. His application was filed in the Prince Albert office but under the regulations the effectual filing date was that on which it was received in Mr. Swain's office in Regina, viz., October 13th, 1938. In the meantime, on October 11th, the Minister, purporting to exercise the powers conferred upon him by regulation 66, had made an order relieving the members of the Syndicate from the lapse. The respondent conceives that he has a claim to be recorded and to have the registration of the Syndicate expunged but he has concluded that, in view of the decisions, he has no status to advance such a claim until he appears upon the record.

In *MacPhee* v. *Box* (1), the Court of Appeal for Saskatchewan determined that the plaintiff in that case could not succeed in view of certain decisions. An appeal to this court (2) was dismissed but as appears from the reasons for judgment, upon a rather limited ground. This Court did not endorse the view taken by the Saskatchewan Court of Appeal but no decision upon the point was given.

(1) [1936] 2 W.W.R. 129; [1936] 3 D.L.R. 286.
(2) [1937] S.C.R. 385.

1940

SWAIN
v.
THE KING
ex rel
STUDER.

Kerwin J.

In the present case, I think the point must be decided and my view is that, having staked claims that were at the time open, the respondent could not, under the circumstances, litigate his rights as against the members of the Syndicate without first acquiring a record. It is obvious that he cannot do this unless we conclude that the Mining Recorder had no discretion to decline to receive the application and record it. In view of the fact that the claims were open and the staking done by the respondent before the order was made by the Minister, section 22 of *The Mineral Resources Act,* chapter 16 of the statutes of 1931, applies, and the interest or rights forfeited or lost are to be revested in the person so relieved

> but subject, however, to any intervening right of any person arising subsequent to the default sought to be remedied and prior to the order of the Minister.

In fact the order is distinctly made subject to section 22.

It is merely to give the respondent an opportunity to litigate the rights he claims that the present application is made and I think the order of the Court of Appeal affording him that opportunity was right. If, of course, the applicant has another remedy at law, the prerogative writ may not issue. It is contended that he had such a right under regulation 132 whereby

> any decision of the mining engineer or other officer of the department, made under any of the provisions of these regulations, shall be subject to an appeal to the minister.

This regulation, however, in my opinion has no bearing upon an appplication to the Mining Recorder to record a person as the holder of a mining claim.

The appeal should be dismissed with costs and the writ issued *nunc pro tunc* as Studer's application was made within the time limited by regulation 39.

Appeal allowed, without costs.

Solicitor for the appellants Swain and The Minister of Natural Resources: *J. E. Doerr.*

Solicitor for the appellant The Mun Syndicate: *E. M. Miller.*

Solicitor for the respondent Studer: *J. G. Diefenbaker.*