

could only arise upon failure of the applicants, after due notice to all (this Callender never had), to unite in appointing a board.

F. A. Magee, Ottawa, for plaintiff.

D. L. McCarthy, for defendants.

H. Fisher, Ottawa, for the American Machine Telephone Co.

ANGLIN, J.—The objection to the exercise of his statutory power by the deputy commissioner is not well taken. The Act confers this power “if the parties do not all unite.” They had not in fact united. As to the sufficiency of the opportunities had by the applicants, or any of them, to unite in appointing three arbitrators, as to the adequacy of any notice given them, as to the necessity, the propriety, or the futility of giving any such notice (none being prescribed by the statute), and as to the character and quantum of evidence that the applicants have not united, or will not unite, in naming a board of arbitration, upon which he should act, in my opinion “the commissioner or the deputy commissioner or person appointed to perform the duty of that officer,” is, by the statute, alone authorized to adjudicate and decide. His determination that the conditions exist in which he should proceed to exercise his power of appointment is not, I think, open to review upon motion for prohibition or injunction (Re Bell Telephone Co., 9 O. R. 339, 345; Re Bell Telephone Co., 7 O. R. 605, 614); assuming that this Court has jurisdiction to entertain such an application, which is open to grave question. (In re Bell Telephone Co., 9 O. R. 339, 346.) After the granting of the local Judge’s order and before service upon them, the arbitrators had actually completed and published their award and are now *functi officio*. The injunction, if continued against them, would be inoperative because that had been accomplished which plaintiff sought to enjoin.

It is charged that defendants, knowing of the injunction, deliberately secluded themselves to avoid service of the order, and complete their arbitral functions. If the jurisdiction to enjoin existed, this would be a serious charge. It rests upon the affidavit of William Johnson, who is contradicted, upon most material allegations, by Mr. William Joseph Lynch, the chief clerk of the patent branch of the department of agriculture. The arbitrators upon oath severally deny knowledge that any order had been made enjoining them from proceeding. I cannot find that they wil-