

to be "north-west side of Lady Dufferin Lake"; (2) that the application was loosely drawn, and although it described the claim as being 20 chains by 20 chains, it was clearly indicated by one of the stakes that the distance from number two to number three was 25 chains; (3) that the Mining Recorder treated the claim as extending to the river, and so marked it on his office map; and (4) that the line from number one to number two post was not blazed.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

L. McDougall, for appellant.

W. R. Smyth, K.C., for respondents.

HON. SIR WM. MEREDITH, C.J.O.:—I am, with respect, of opinion that the Commissioner came to a wrong conclusion, and that the true eastern boundary of the respondents' claim is a straight line drawn from number one post to number two post.

In addition to the statement in the claim that it is 20 chains by 20 chains, and the fact that the sketch which accompanied it shews it as a rectangular figure, there is the cogent circumstance that so far from the sketch shewing that the river or lake is the eastern boundary it shews the contrary. It was supposed by the staker that there was a bend in the river extending into the rectangular figure, and it is plain that he intended that the claim should include that part of the river which lay within the figure. The fact that instead of there being a bend, the land extended some distance to the east of the rectangular figure, is immaterial on this point of the case, viz., what the application and sketch shewed was intended to be included in the claim. These circumstances, in my opinion, are much stronger against the respondents than are the circumstances relied on by the Commissioner.

As I understand the Mines Act, the foundation of the right which a staker acquires or may acquire is the claim which he files with the recorder; assuming of course that he has complied with the Act as to discovery, staking, etc.; and therefore the fact that on the map in the office of the re-