

The action was tried without a jury at Haileybury.

W. A. Gordon, for the plaintiff.

F. L. Smiley, for the defendant.

ROSE, J., in a written judgment, said, after setting out the facts, that he could not see in the evidence anything that justified the conclusion that the claim which the plaintiff staked, or assisted in staking, in the name of the defendant, was to be treated as anything but partnership property. In the questions and answers in the defendant's examination for discovery and in the evidence of one Macauley there was the corroboration required by sec. 71 of the Mining Act of Ontario, R.S.O. 1914 ch. 32.

The defence that the question now before the Court was determined by a decision of the Mining Recorder at Elk Lake was raised by pleading.

In December, 1919, the plaintiff filed with the Recorder a "dispute" against the mining claim, in which he alleged that the claim was illegal or invalid, because the plaintiff was "entitled to an undivided half interest in the said claim, which had been transferred by the recorded holder"—the defendant—"to one James C. Nelson." The plaintiff claimed "a one-half interest in the said claim, the same having been staked by A. S. Perkins and myself in equal shares, and was transferred to James C. Nelson without my knowledge, the said Nelson being well aware of my claim." It did not appear upon whom, if upon any one, the "dispute" was served. It was dated and the affidavit in support of it was sworn on the 22nd December, 1919, and on the same day the Recorder took the evidence of the plaintiff and Perkins and Nelson and another witness, and decided and ordered "that James C. Nelson still holds all interest in mining claim M.R. 5868, and the disputant Lawrence Duggan is not entitled to any interest in this claim."

By sec. 123 (2) (a) of the Act, it is declared that the Mining Commissioner shall have jurisdiction and power to hear and determine all claims, questions, and disputes arising before patent between contesting claimants for or in respect to any right, interest, or title in any unpatented mining claim. By sec. 130 (1), a Mining Recorder is given, as to lands situate in his mining division, all the powers conferred upon the Commissioner by sec. 123; and, by sec. 130 (5), the decision of the Recorder is final and binding unless appealed from. The lands in question are in the mining division of the Recorder by whom the "dispute" was heard, and that Recorder had jurisdiction to determine such a question as was raised before him; and it was not open to the plaintiff, who initiated the proceeding, to suggest that in this particular case the Recorder was without jurisdiction, merely