

DIVISIONAL COURT.

DECEMBER 20TH, 1909.

RE PERKINS AND DOWLING.

*Mines and Minerals—Working Conditions—Certificate of Record  
—Appeal from Mining Commissioner—Jurisdiction—8 Edw.  
VII. ch. 21, sec. 78 (4) (O.)*

Appeal by the claimant Perkins from the decision of the Mining Commissioner for Ontario, dated the 16th October, 1909, by which he affirmed the validity of a certificate of record issued by the Mining Recorder of the Gowganda mining division to the respondent Dowling in respect of a mining claim in that division. The appellant asked that the certificate should be set aside, and that the respondent's claim should be declared forfeited for non-performance of the working conditions required by sec. 78 of the Mining Act of Ontario, 8 Edw. VII. ch. 21.

The appeal came on for hearing before MEREDITH, C.J.C.P., TEETZEL and SUTHERLAND, JJ.

J. M. Ferguson, for the respondent, took the preliminary objection that no appeal lay from the decision of the Mining Commissioner confirming the validity of the certificate of record issued by the Mining Recorder, citing sub-sec. 4 of sec. 78 of the Act, which provides that "the Recorder, if satisfied that the prescribed work has been duly performed, may grant a certificate. . . but he may first, if he deems proper, inspect or order the inspection of the work, or otherwise investigate the question of its sufficiency, and his decision thereon shall be final unless appeal is made to the Commissioner, whose decision shall be final."

R. A. Reid, for the appellant, argued that the decision of the Commissioner was not final unless he had made an inspection or investigation under the above provisions of the Act.

At the conclusion of the argument on the question of jurisdiction, the judgment of the Court was delivered by MEREDITH, C.J., dismissing the appeal, on the ground that the decision of the Commissioner was final, whether or not any inspection or investigation had been made by him before giving his decision.

As the point was a new one, no costs were awarded.