The evidence does not establish that this requirement had been complied with at the time the action was commenced.

Looking at all the terms of the contract, my opinion is that the action was brought prematurely. In that view defendants and not plaintiffs are entitled to the costs of the action.

FIRST APPELLATE DIVISION.   SEPTEMBER 15TH, 1913.

Re OLMSTEAD AND EXPLORATION SYNDICATE OF ONTARIO, LIMITED.

5 O. W. N. 8.

Mines and Minerals—Boundary of Claim — Boundary as Shewn on Claim Filed to Govern — Boundary on Mining Recorder's Map Immaterial—Mining Commissioner—Appeal from.

SUP. CT. ONT. (1st App. Div.) *held*, that the boundaries of a claim which a staker acquires under the Mines Act are delimited by the claim as filed and the fact that the claim as shewn upon the map in the office of the Mining Recorder shews more extensive boundaries does not extend the area of the claim.
Judgment of Mining Commissioner reversed.

Appeal by George Olmstead from the decision of the Mining Commissioner, dated 18th February, 1913; the controversy being as to what is the eastern boundary of the mining claim of the respondents.

The claim as applied for was shewn by the sketch which accompanied the application to be rectangular in form; and the "length of the outlines" of it was stated to be 20 chains by 20 chains, and the easterly boundary, as shewn on the sketch, was a straight line from number one post to number two post.

It was contended by the respondents that the easterly boundary is not this straight line but that it is the westerly margin of the east branch of the Montreal River, called in the application "Lady Dufferin Lake," which is but a short distance easterly of the straight line; and the Mining Commissioner adopted that view, being of opinion that the application and sketch, and the work on the ground, indicate that the applicant intended to include in the claim he was making the land lying between the straight line and the margin of the river.

The reasons which led the Commissioner to that conclusion were: (1) that the claim is stated in the application