

Pinnelle on the 14th October received the notice sent to Haileybury, and was then in time to launch an appeal, and might then have obtained an extension for fifteen days, but did nothing.

Thompson obtained his certificate of record on the 20th October.

The time limited by sec. 133 expired on the 31st October at any rate, and nothing was done till the 18th November, when the Commissioner—so far as I can see, without any jurisdiction—gave Pinnelle an appointment to hear the application on the 21st December. On this date Pinnelle did not attend, and the Commissioner dismissed his motion. On that occasion he was represented by a friend, but had no evidence of any kind.

No appeal was had from the order within the time limited. A Judge has the power to extend the time for a period of fifteen days. On the last day but one of the time an application was made to me *ex parte* for an order extending the time. I declined to act *ex parte*, and directed notice to be given for the next day. By one more bungle, this was not done, and, with much hesitation, I then made an *ex parte* order, not to issue till notice was served, and reserving the right to consider the whole matter upon hearing both parties. No adequate material was then produced, and the matter again stood, and some informal material has now been placed before me.

Making every allowance for the ignorance of this foreigner . . . it is clear that the case is quite hopeless. The numerous delays are quite unexplained; and, though the Recorder was wrong in not giving the notice required, I do not think a notice sent to Porcupine would have reached the appellant. The notice under sec. 130 did not; and, in any event, the Act seems to attach great importance to the notice of judgment under sec. 130. When this was received, immediate action was required, and this is absolutely wanting.

As at present advised, I think that the Commissioner alone can extend the time, and his decision is, I think, final. The appeal given is not from a discretionary order of this kind, but from a final decision upon the merits. Further, the order of the Commissioner made refusing the extension of time was upon an application made after the expiry of the time limited for an extension under sec. 133.

In any and every aspect of the case, the motion fails.

What I fear is that some time a case may arise in which, like this, no due notice is given of the hearing, and the notice of the decision may be duly given, but may not reach the party