

respects complied with the Act, then clearly McNeil is out, and there will be no necessity of considering his status: if not, the status of McNeil is established unless the McCully staking, &c., stands in the way.

In respect of McCully, the Commissioner finds that there was no original discovery of any kind, and that the licensees who staked on his behalf staked upon the discoveries already existing. If this be so, then the staking of McCully was not in accordance with the Act, and therefore cannot stand in the way of McNeil.

McNeil has, therefore, it would seem, the right to have investigated the validity of the Plotke applications, and also that of the McCully application, if both the Plotke applications are held to be bad.

It is not conclusive against the McCully claim that H. A. McNeil had already staked on 6th December; this staking may have been of such a character that under sec. 161 the claim was abandoned; or it may be that there had been to the knowledge of McCully's licensees an abandonment in fact (if there could be such a thing outside of the statutory provisions—this it is not here necessary to decide). And in any case the staking by H. A. McNeil on 6th December cannot interfere with the staking by John J. McNeil on 13th January. There is no evidence of identity between H. A. McNeil and John J. McNeil so as to cause John J. to be bound by any estoppel by record in proceedings at the instance of H. A., if there were any such estoppel against any one, which I do not decide.

As to the position as appellant of McCully, in view of what I have said, I think he is not ousted from the status of an appellant of necessity by the stakings of Plotke; whether he is so or not by that of 6th December, we are not in possession of sufficient findings to enable us to determine; but I think that the Commissioner is right in finding that there was no discovery on behalf of McCully under sec. 132, and consequently, in my view, the appeal of McCully must be dismissed, and with costs.

In respect of the appeal of McNeil, I think there must be a new trial. The method to be pursued upon such new trial, I do not think we should prescribe. The costs of the former proceedings, of this appeal, and of the new trial, should be dealt with by the Commissioner.