

John King, K.C., for Pinnelle.

T. P. Galt, K.C., for Thompson.

H. E. Rose, K.C., for a purchaser from Thompson.

MIDDLETON, J.:—While in this case I think Pinnelle has no one to blame but himself, and that, even if there were power to relieve him from his default, I should not do so, I desire to draw attention to the present provisions of the Mining Act and the possibility of their resulting, in some case, in serious injustice.

On the 16th June, 1910, Thompson made his application to be recorded as owner of a mining claim. On the 13th July, Pinnelle filed a dispute, giving as his address for service "Porcupine P.O."

On the 6th September, 1910, the Mining Recorder fixed the 1st October for the hearing and sent notice of hearing to Pinnelle at Haileybury P.O. This was not delivered, and appears from the P.O. stamps to have been returned to the Mining Recorder from Haileybury on the 1st October, so that it would not reach him until after the hearing.

On the 1st October an order was made, reciting the notice by registered letter to Pinnelle at Haileybury and his non-appearance, and dismissing his dispute. Notice of the decision was mailed by the Recorder to Pinnelle, addressed to him at Porcupine P.O., and a duplicate was sent to him at Haileybury. The notice sent to Porcupine was ultimately returned to the Recorder undelivered. The Recorder says he sent the original notice to Haileybury, instead of to Porcupine, because Pinnelle called upon him and told him he was going there.

Section 63 (3) of the Mining Act of Ontario, 1908, makes it the duty of the disputant to name an address for service not more than five miles from the Recorder's office; and sec. 133 (4) would have justified service upon him by a registered letter sent to that address. The service actually made was quite unauthorised and bad.

The effect of a certificate of record under the statute makes it impossible to regard the action of the Recorder as a nullity; but it may afford some ground for an application under sec. 66.

Notice of the decision is required under sec. 130 (3), and an appeal from the Recorder to the Commissioner will lie (sec. 133), upon the filing and service of a notice within fifteen days, or within such further time, not exceeding fifteen days, as the Commissioner may allow. The Commissioner may also, in the absence of notice under sec. 130, when it is made to appear that the appellant has suffered some substantial injustice, and has not been guilty of undue delay, allow an appeal at any time.