

the 8th November, 1909, by which the appellant agreed to purchase from J. W. Millar certain mining claims, for the sum of \$100,000, payable in four equal instalments of \$25,000 each, the first of which was to be paid on the 8th December, 1909; but, in consideration of \$2,000, it was provided by a subsequent agreement that this payment should be made on the 8th January, 1910. Default was made in this payment, and on the 13th January, 1910, on the ex parte application of the respondent, Millar, and without notice to the appellant, the Mining Recorder removed the agreement from the registry, and subsequently gave notice of his having done so to the appellant. The appellant thereupon appealed to the Mining Commissioner, on the grounds: (1) that the Recorder had no right to cancel the entry of the agreement without notice to the appellant; (2) that the failure of the appellant to comply with the terms of the agreement was a question of fact and law, and therefore not within the jurisdiction of the Recorder; (3) that the procedure followed in cancelling the entry of the agreement was irregular and contrary to the provisions of the Mining Act of Ontario. The appeal was heard by the Commissioner on the 9th February, when the appellant was absent, and his counsel asked for an adjournment, which was refused. The case was proceeded with in the absence of the appellant, and judgment given by the Commissioner affirming the decision of the Recorder. The Commissioner rendered his decision on what was practically a re-trial of the case on the merits. It was conceded that the Recorder should not have cancelled the entry of the agreement without notice to the appellant, but it was strongly argued that under sec. 133(2) of the Act, the Commissioner had full power to retry the matter, that it was the appellant's own fault that he was not present with his witnesses to give evidence at the trial, and that the documents produced at the trial, and the evidence of the respondent, clearly shewed that the appeal was without merits. The Court (BOYD, C., MAGEE and LATCHFORD, JJ.) were, however, of opinion that the only question raised by the appeal to the Commissioner was as to the authority of the Recorder to cancel the entry of the agreement on his books without notice to the appellant, and that the Commissioner should not have tried the case on the merits without giving the appellant an opportunity to have his whole case heard. The case was accordingly remitted to the Commissioner for re-trial, on terms that the appellant should proceed with the matter in ten days, and that the overdue instalments, amounting to \$50,000, with interest, should be paid into Court within four days. Costs reserved, to be dealt with by the Commissioner. O. E. Fleming, K.C., for the appellant. G. M. Clark, for the respondent.