

8 O. W. R. 452, requiring the appellant, pursuant to the Mines Act, 1906, to accept the applications of the several plaintiffs for certain mining claims tendered to the appellant.

J. R. Cartwright, K.C., and W. D. McPherson, for the appellant.

J. Bicknell, K.C., for plaintiffs Munro and Mackie.

Grayson Smith, for plaintiff Richardson.

The judgment of the Court (MEREDITH, C.J., MAGEE, J., MABEE, J.), was delivered by

MEREDITH, C.J.:—The question for decision is whether a mining recorder is warranted by the Mines Act, 1906, in refusing to receive an application to record the staking out of a mining claim, otherwise in proper form, when presented to him under the provisions of sec. 156 of the Act, because an application has already been received by the mining recorder to record the staking out by another person of the same mining claim; in other words, whether, after an application has been received, the mining recorder may refuse to receive an application from another person to record his staking out of the same claim until the first application has been disposed of, and unless it is disposed of adversely to the application.

I agree with my brother Anglin's view that the duty of the mining recorder under sec. 156 is a purely ministerial one, and that if the conditions mentioned in the section are complied with by the applicant, it is the duty of the mining recorder to receive his application in order that it may be dealt with by him under the provisions of the Act, unless the contention of the appellant to which I have referred is well founded.

It is extremely difficult for me to reconcile with one another all the provisions of the Act bearing upon the question to be determined, but, after the best consideration I have been able to give to the matter, I have reached the conclusion that the contention of the appellant is not entitled to prevail.

It is important for the determination of the question to ascertain what are the rights, if any, acquired by the lodging