

G. F. Shepley, K.C., and W. J. Elliott, for plaintiffs.

I. F. Hellmuth, K.C., for defendant.

MABEE, J.:— . . . The first step will be to ascertain what the agreement regarding commission really was. There is no dispute between the parties over the fact that in certain events plaintiffs would have been entitled to be paid \$150,000 commission. The vendor, Anthony Blum, and the intending purchaser, Dr. Von Hogen, were brought together by plaintiffs, and as a result the following paper was signed:—

“Toronto, 10th November, 1906.

“Mr. Hugo Von Hogen,
500, 5th Avenue, New York.

“Dear Sir: I hereby agree and bind myself, my heirs and my assigns, to sell and transfer to you and your assigns all my rights and interests in the Laurentia Mine, known as mining location H. P. 371, located as Gold Rock, Manitou regions of Rainy River district, Ontario, including about 1,000 acres of mining locations, complete as it stands and exists to-day, with a clear title in every way, for the sum of \$8,000,000. Payments to be made as follows: \$10,000, which will be forfeited if sale is not made as herein stipulated, upon receipt and signing of this letter, and receipt of which is hereby acknowledged; \$500,000 within 5 days after the inspection of the mine by you; \$2,490,000 within 30 days from date hereof, after which you can take full possession of the mine; and \$5,000,000 within a year from date, or after the sum of \$200,000 has been expended by you in underground work upon the property. All necessary papers to be drawn and sealed and signed immediately after the inspection of the mine.

“Very truly yours,

“Anthony Blum.

“Accepted,

“Hugo Von Hogen.”

Nothing had been said about commission prior to the execution of this document, and plaintiff Harold A. Wiley says that immediately after the agreement had been made it was arranged between himself and his brother, on the one hand, and defendant and Von Hogen, on the other, that they (the plaintiffs) were to be paid \$300,000 as commisston,