

of the balance of the purchase money and interest. Defendant was to have until 15th July, 1903, to examine the title, etc. The vendors were to pay proportion of taxes and insurance up to date of offer, and after that date defendant was to assume them. Then the offer contained this special proviso: "Time shall in all respects be of the essence of the agreement of sale, and unless the payments are punctually made at the time and in the manner above mentioned, and if such default shall occur before the execution of the transfer and of the charge of mortgage above mentioned, the agreement of sale shall be null and void and the sale cancelled, and in that event, you shall have no right to recover any part of the purchase money already paid."

On 23rd June defendant accepted the offer in these words: "I do hereby accept on behalf of myself or assigns the above offer and do agree to become the purchaser of the lands mentioned in it, upon the terms and conditions therein contained. T. Clergue."

A supplemental agreement was made as to ore extracted from the land before payment in full of the purchase money, but this is not material for consideration in this action.

On 15th July, 1903, plaintiffs accepted from defendant his promissory note for \$4,500, at 4 months from that date, in lieu of the cash instalment, and defendant was allowed to go into possession of the lands. Defendant put a person in charge of these lands as caretaker, and the authority of this person has never been questioned or countermanded. The note was not paid at maturity, and plaintiffs recovered judgment for the amount of it and interest, and that judgment has been paid.

On 23rd June, 1904, there fell due the instalment of principal of \$24,000 and interest for one year on \$120,000 at 5 per cent., amounting to \$6,000, making \$30,000. This was not paid.

On 19th January, 1905, defendant assigned his rights under the agreement to "The Standard Mining Company of Algoma, Limited," and on 10th March, 1905, plaintiffs, the Standard Mining Co., and defendant entered into a new agreement by which plaintiffs were to sell this same property to that company for \$125,000, on which the original deposit or payment of \$500 by defendant was to be credited. Of the balance, \$4,500 together with interest and costs, represented by the judgment against defendant, was to be paid within one month, and the yearly instalments were to be paid