

interest in another property, to be worked on the same terms. When plaintiff demanded a transfer defendant tendered one that was not considered satisfactory, and plaintiff had a form of transfer prepared which defendant refused to sign. Plaintiff left the province and subsequently his agent placed the original transfer on file in the Mines Office.

*Held*, that this was an acceptance of the transfer tendered by defendant, and plaintiff could not after that acceptance claim that he had no interest in the areas referred to, but must be regarded as an owner and entitled to an accounting with regard to the property from the time that work commenced.

After plaintiff's departure from the province defendant inquired of his agent whether plaintiff had left any money for the purpose of working the property and was informed that he had not and that any work that had to be done would be a matter for consideration.

*Held*, that defendant could not after this go on indefinitely making expenditures and charging them up to plaintiff and that the accounting must close with expenditures made up to the date of the interview.

*Power*, K.C., for plaintiff. *Iarris*, K.C., and *Kenny*, for defendant.

Trial.—Drysdale, J.]

[Feb. 1.

BLACK v. TYRER ET AL.

*Sales—Contract for cargo of lumber—Failure to deliver according to specifications—Refusal to accept—Shipment on vessel subsequently lost—Receipt by master—Held not a waiver—Intermediary—Advances and commissions.*

Plaintiff contracted through the defendant T. with the defendants G. & W. for the supply to the latter of a cargo of lumber in specified quantities, of specified dimensions and in specified proportions. The contract called, among other things, for the supply of a quantity of spruce boards, of which not less than fifty per cent. were to be of certain size. The defendants G. & W., on receiving notice that not more than twenty-five per cent. of the spruce boards were of the required size, refused to accept delivery.

There were some negotiations with a view to inducing them to accept the cargo on new terms, and, while these were pending, the vessel chartered by defendants, upon which the cargo had