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## HIGH COURT DIVISION.

SUTHERLAND, J.

JULY 23RD, 1919.

### BROWN v. CRAWFORD.

*Contract—Sale of Shares in Mining Company—Delivery “when Stock shall be Issued”—Stock Held by Directors under Pooling Agreement—Knowledge of Parties—Oral Evidence to Explain Written Agreement—Ambiguity—Oral Evidence of Condition—Action by Vendee for Specific Performance of Agreement or Damages for Breach—Laches—Prospectus—Absence of—Act respecting Prospectuses Issued by Companies, 6 Edw. VII. ch. 27 (O.)—Application of—Pleading—Amendment.*

Action for specific performance of an agreement whereby the defendant, in consideration of \$1,500 paid by the plaintiff, promised and agreed to transfer to the plaintiff 15,000 shares of the fully paid-up stock of the Prince Rupert Cobalt Silver Mines Limited (“when stock shall be issued”), or, in the alternative, for damages for breach of the agreement.

The agreement recited that the defendant was the owner of 30,000 shares and had an option on another 400,000 shares of the stock of the company (“as a member of the Syndicate”); and the defendant agreed to share and share alike with the plaintiff in all profits (if any) which the defendant might make on the sale of the 400,000 shares.

The defence was that the 15,000 shares were not to be transferred to the plaintiff until issued by the company, “and the said shares were never issued to the plaintiff or the defendant, as all the paid-up stock of the company was, to the knowledge of the plaintiff, held as pooled stock by the directors of the company at that time and until the company ceased to do business some years later, and no share-certificates were ever issued to any shareholder.” The defendant also alleged that he had sold none of the 400,000 shares, although he tried to do so before the option expired, and never made any profit thereon.