

contract to waive his "right to the benefit of the Act," would be to deprive him of the protection provided for him by the Act, and the Act would become absolutely a dead letter.

Order made for prohibition with costs.

BRITTON, J.

JUNE 10TH, 1907.

TRIAL.

VIVIAN v. CLERGUE.

*Vendor and Purchaser—Contract for Sale of Mining Property—Action to Recover Instalments of Purchase Money—Land not Conveyed to Purchaser but Possession Given—Terms of Agreement—Effect of Subsequent Agreement—Rectification—Action for Damages—Election to Treat Contract as Rescinded.*

An action to recover money under an agreement for the sale of mining property in the districts of Algoma and Nipissing.

W. M. Douglas, K.C., and A. H. F. Lefroy, for plaintiffs.

W. E. Middleton, for defendant.

BRITTON, J.:—Plaintiffs by their agent on 20th June, 1903, offered to sell to defendant property consisting of 3,066½ acres for \$125,000, payable as follows: \$500 as a deposit upon signing the agreement; \$4,500 upon completion of purchase; and \$120,000 in 5 yearly instalments of \$24,000 each in 1, 2, 3, 4, and 5 years from date of offer, with interest at 5 per cent. per annum, at the time of each instalment, on the whole amount that might from time to time remain unpaid. The purchase was to be completed on 15th July, 1903, at the office of Lefroy & Boulton, Toronto, and defendant was then to be given possession. It was further stipulated and made part of the offer that defendant, as soon as he had paid three-fifths of the total purchase money, together with all interest accrued on the whole, should be entitled to call for a transfer of the lands, upon a good and sufficient first charge and mortgage being executed upon the whole of said lands to the vendors to secure payment to them