

The evidence of the experts was taken subject to the objection of the plaintiffs, that the case had to be disposed of on the written terms of the contract and that no evidence was properly admissible as to whether 65,000 tons could or could not be taken out of the property in any one year.

The evidence of Harris was also put in on behalf of the defendant to shew the efforts made by the latter to find and develop the ore. He says that he left early in 1908; that he made an honest endeavour, and did his best to find iron ore; that he employed from 15 to 35 men at various times in the work, including the plaintiffs, who were on the payroll, but that he was unable to find any merchantable iron ore. He says that in addition to his written reports he verbally reported to the defendant. He says that by the time he finished, in February, 1908, they had worked all over the property and had made a magnetic survey over every 50 paces or so. He also explained that certain estimates made in his reports as to what percentage would be yielded from ore from which samples had been taken did not come up to his expectations. He expressed the opinion that at no place could 10,000 tons of ore be taken out. He said that if he estimated all kinds of iron formation down to 30 per cent. a good deal more than 10,000 tons could be got out, but this would be regardless of cost, that the percentage would not be high enough to make it merchantable ore.

The defendant said that in his interview with the plaintiff Joseph Dube, in Toronto, before the contract in question was signed, Dube had stated that in his opinion the properties in question were as valuable as the Moose Mountain property, which the defendant says was a very valuable mining property. He said that what he understood, he contracted to do was to try and find real commercial ore, in which case he was to mine it and remove it to a furnace. If found on the property it would be necessary to build a railway to remove it to a furnace. I quote further from defendant's evidence:—

“Q. Did you discuss with him that subject as to the advisability of taking it out or anything of that kind? A. Yes, I discussed it with him if it was found it was understood that I was to pay him fifteen cents a ton on 65,000 tons a year, if we could find commercial ore there . . .

Q. Then it is clear from the correspondence, without troubling you with the details, Sir Donald, that at the time you were making this agreement you had been, shall we say