

instalment of a royalty of \$9,750, claimed to be due under an agreement in writing, dated the 8th April, 1908.

The plaintiffs were mining prospectors, and in the year 1906, had become the discoverers of certain mining rights or claims in the vicinity of Burwash lake in the Temagami Forest Reserve in the province of Ontario, and had purchased the rights of certain other discoverers in other claims.

On the 6th October, 1906, an agreement or option was entered into between them and the defendant in which the plaintiffs were called vendors and the defendant purchaser, by which it was provided that for the sum of \$50,000, \$2,000 of which was to be payable on or before the 1st December, 1906, and the balance on or before the 6th July, 1907, the vendors offered to sell to the purchaser their rights in certain of said mining claims, the offer to remain open for acceptance until default was made in the payment of any instalment of purchase-money; and on default to immediately become null and void. It provided that the purchaser should have access to the property for the purpose of searching, prospecting, and exploring for minerals and to examine the lands and develop the mines thereon and to remove therefrom sufficient ore for testing in a laboratory or smelter.

The purchaser employed one Harris, a man of practical mining experience, to examine the lots included in the option, and on the 29th October, 1906, received a report from him. Thereupon the defendant paid the \$2,000 and proceeded to spend considerable money in prospecting and examining as authorized. He continued to employ Harris during the year 1907, and up to the early part of 1908, and he was in charge of the prospecting operations. He received a further report from him on the 21st February, 1907, and other reports during that year up to the 31st December.

On the 28th June, 1907, a further agreement was entered into between the parties referring to the previous agreement or option and providing that the offer of sale contained therein should remain open for acceptance, and the time for payment of the balance of \$48,000 be extended until the 6th October, 1907, and the defendant therein bound himself to perform or cause to be performed on each of the claims the work and other conditions necessary to preserve the title of the plaintiffs thereto until the expiration of the extended period. The defendant continued to expend money on the properties in prospecting and exploration.