The company took over the land, found it was not worth developing, and failed to do the necessary work; and the land was at length taken away and conveyed by the province to other persons. The company refused to issue the $16,000 stock.

As to the main action, it is plain that the fact that the stock was not furnished by the plaintiffs to the defendants is a complete answer to the action; unless the stock were supplied for the defendants to sell, it is obvious that the defendants could not sell it. There is nothing in the facts or in the documents implying an agreement on the part of the defendants to cause the stock to be issued or to sell the stock in any event without regard to whether the company issued it or not. The facts may be such that an action would lie against the defendants differently framed; but, with the pleadings in their present condition, the judgment is right.

Then as to the counterclaim. . . .

Before the deal was closed with the company, Neil was asked, "What have you in these properties?" He answered, "We have got a well-defined vein running up over the edge of the cliff, and we have an assay from that vein as high as 510 ounces." It was upon these representations that the company bought, as well as the representations to the same effect previously made by Parker. There is no such vein, and the trial Judge has found that the one giving the 510 ounces' assay was not taken off that property at all.

The learned Judge has directed judgment to be entered for the defendants for $6,000, the amount of the purchase-money. I cannot follow the reasoning. The purchase-money can be directed to be returned only when the contract under which it is paid can be and is rescinded. Rescission of the first contract with Parker and Woodward there cannot be; they have dealt with the land by having it transferred to the company, and the parties cannot be reinstated in their original condition. As to Culver, he paid the sum of $2,000 for Parker and Woodward; and the same rule applies; and, had he paid for his company, the company is not a party to this action, and does not ask rescission.

The action of Parker and Woodward is—if any action lies—for fraud as to the $4,000. This fraud must have been committed before they paid the $4,000, i.e., before Clark made default. What is relied upon as fraud is the false statements of Neil and Johnson as to the vein and the assay, which were made . . . not that Parker and Woodward should buy, but that Clark and his associates should. These representations had