MEREDITH, C.J.:— . . . The question was, whether or not there was a contract between the respondents Currie and Otisse and the appellant for the sale by them to him of the mining property in question; in other words, whether there was such a contract as the appellant sets up in his pleadings. . . .

[Reference to Winn v. Bull, 7 Ch. D. 29, per Jessel, M. R., at p. 32; Chinnock v. Marchioness of Ely, 4 DeG. J. & S. 638, per Lord Westbury, at pp. 645-6; Rossiter v. Miller, 3 App. Cas. 1124, per Lord Cairns, at p. 1139, and per Lord Hatherley, at p. 1143.]

I am inclined to think that neither the offer nor the acceptance can be said, in the language of the Master of the Rolls, to be "expressed to be subject to a formal contract being prepared," which I take to mean, "is expressed to be subject to the condition that a formal contract is to be prepared;" and that the solution of the question in the case at bar is one of construction, and depends upon whether "the parties intended that the terms agreed on should merely be put into form, or whether they should be subject to a new agreement, the terms of which are not expressed in detail."

In my opinion, the latter is the proper conclusion. The first payment of $10,000 is to be made on the execution of a formal agreement, and the appellant's undertaking is to complete the purchase and make the payments mentioned in the offer "when formal documents signed."

An important part of the consideration is the "75,000 shares of fully paid non-assessable stock in a company to be organised on the property;" and yet nothing is said as to the amount of the capital stock of the company, or the par value of the shares; nor, beyond the somewhat indefinite statement that the company is to be "organised on the property," is there anything to indicate the purposes for which or where or how it is to be incorporated.

It may be that the latter matter is left to the choice of the appellant; but I am unable to agree with the argument of his counsel that the other matters not provided for, which I have mentioned, were also to be left to him—in other words, that he might deliver shares of the par value of one cent, of one dollar, or any other par value, at his will.

Such an agreement might, of course, be made; but it seems to me a much more reasonable view of what the parties intended is that these matters purposely left to be determined when the formal contract should be entered into and the cash payment of $10,000 was to be made.

The case seems to me to fall within what was said by Lord Blackburn in Rossiter v. Miller, 3 App. Cas. at p. 1151. . . .