

It appears that Clarry, who lives in the province of Ontario, was on the 1st of November, 1907, in the city of Vancouver, and observing a notice in the window of one Gallagher, a real estate agent, to the effect that he had certain timber limits in British Columbia for sale, entered Gallagher's office, and then came into touch with the plaintiff, Vaughan-Rhys, the ostensible owner of these limits. The notice which had attracted Clarry's attention was discussed. It contained a statement as to the quantity and quality of the timber on the limits, and their accessibility. At this stage it doubtless played an important part in the mind of Clarry, for he asked the plaintiff to sign it, which the plaintiff did.

On this occasion the plaintiff made a written offer to the defendant for the sale of the limits. That offer contains a number of terms, amongst others this term:

"As soon as the stock is issued, if this is satisfactory to you, a proper agreement will be drawn embodying the above conditions; or if you give me your cheque for the \$500, dated ten days from now, that is the 11th November, I will accept the same."

The defendant did not accept the offer unconditionally; his acceptance, which is in writing, at the foot of the offer, being in the following words:

"I accept the above, subject to report of P. Meyers being satisfactory; and subject to title being clear."

That qualified acceptance did not constitute a contract.

Clarry left British Columbia about this time, leaving Gallagher to look after his interests, including the securing of the completed document referred to in the plaintiff's offer.

On the 9th of November the plaintiff, Vaughan-Rhys, delivered to Gallagher a document under seal, signed by the plaintiff, wherein he offered and agreed to sell the limits to Clarry on the terms therein set forth. That agreement was left with Gallagher. Clarry says he did not receive it from Gallagher, but Gallagher, being Clarry's agent to secure the document, delivery to him was delivery to Clarry.

Subsequently Clarry completed the purchase, and the limits were transferred to him; and the only contract of which we have any evidence is the one resulting from the agreement on the 9th of November, 1907, and the defendants' conduct in completing the purchase.

Thereafter, certain litigation in the Courts of British Columbia arose between the parties in respect of the dealings