

The defendants must pay the plaintiffs their costs.

Scott & Scott, Toronto, solicitors for plaintiffs.

Dewart, Young, & Maw, Toronto, solicitors for defendants.

FALCONBRIDGE, C.J.

MARCH 25TH, 1902.

TRIAL.

CLARK v. WALSH.

Sale of Mining Land—Agreement to Incorporate Company to "Handle and Acquire"—Specific Performance—Foreign Incorporation—Amendment.

Action for specific performance of an agreement dated 16th November, 1900, whereby plaintiff Clark undertook to deposit the sum of \$2,000, part of the consideration, to credit of defendant in the Ontario Bank at Port Arthur, on the 1st January, 1901, and by said date incorporate a company with a capital of \$500,000 in fully paid shares, to handle and acquire certain mining locations near Sapome Lake, Rainy River District, belonging to defendant, and to assign to her 100,000 fully paid shares, and to do certain work in developing the property. After the agreement the defendant's husband, J. J. Walsh, contracted with plaintiff Clark to and did sink a shaft, and then assigned his claim for the work done, to the defendant, who counter-claimed for its value. At the trial the plaintiffs asked leave to amend by alleging, *inter alia*, that it was agreed and understood that foreign incorporation was to be obtained.

A. B. Aylesworth, K.C., and N. W. Rowell, for plaintiff.
R. C. Clute, K.C., for defendant.

FALCONBRIDGE, C.J.:—The incorporation in the State of West Virginia of a company having its principal office or place of business at Buffalo, U.S., with the enormous powers and purposes set out in the agreement and certificate of incorporation, was not in numerous material respects the company "to be incorporated to handle and acquire the property," within the meaning of the memorandum of agreement of the 16th November, even if plaintiff were entitled to any variation or modification of that agreement by reason of any contemporaneous verbal discussions on the subject. And this West Virginia company, whose corporators live in Massachusetts and New York, did not obtain a license authorizing it to carry on business in this Province until 11th June. Moreover, the dealing with and manipulations of the stock were not at all of such a character as to convey the idea that defendant's \$100,000 thereof would be of any value to her. Action will therefore be dismissed and the proposed amendment to the statement of claim not allowed.