

At the trial the plaintiffs put in the agreement and read from the examination for discovery of the defendant to shew that he had signed the contract; paid the \$35,000 thereunder; obtained transfers of the properties covered by the agreement and had, under the agreement and in pursuance thereof, gone on the property and done work. I quote further from the examination:—

“57. Q. Under that agreement, Sir Donald, in pursuance of that, you went on the property and did work?  
A. Yes.

58. Q. Treated it as your own, as you were entitled to?  
A. Yes, under the agreement we had, the right to go on.

59. Q. And you did go on, and treated the property as your own? A. Yes.”

The defendant had had the property examined in November last by two mining experts, who said that they went upon the property to see if there was any iron ore that could be “commercially worked,” and could find nothing that could be worked at a profit; they could find no merchantable ore; that everywhere they went there were evidences of drilling, small quantities of iron ore; that 65,000 tons of ore could not be taken out in a year. One of these experts, Ferrier, said that he had observed ore which was in considerable part of iron; that these were isolated occurrences on most of the claims and largely loose and non-continuous. He gave as a definition that ore was “a mineral substance of such quality and in such quantity that it might be exploited at a profit,” and stated that its essential feature was that the mineral might be extracted at a profit. He said that non-payable ore is a contradiction in terms. The other expert, Barlow, also said that he had gone over the properties with Ferrier, and found no iron ore of commercial quality in commercial quantities. At one spot there would be a few thousand tons of ore, say 4,000 or 5,000. He also agreed that it was not possible to take out 65,000 tons in any one year. He said that he and Ferrier were engaged in their inspection the greater part of two days; that there were 26 locations covering about 1,000 acres. While he would not say that he put his foot on 100 acres out of the 1,000, he expressed the opinion that owing to the character of the formation the two days’ time occupied in the inspection was sufficient to enable them to report.