

defendants were at the same meeting elected to the directorate, the 30,000 shares, 10,000 apiece, having been transferred to them on the company's books, and provision was made for the discount of a note of \$5,000, from the proceeds of which the preferential liabilities of the company, some \$2,000, were to be paid, the balance being intended for the future prosecution of the company's work. Upon this note, made by the company, the defendants, with other directors, became indorsers. I find as a fact, upon the evidence, that the giving of this note, and the application of its proceeds, as above stated, was acquiesced in and accepted by defendants as a fulfilment of the condition of their agreement providing for the conversion of outstanding preferential liabilities into an unpreferred debt of the company. It was understood that at or before the maturity of this note, which was made at three months from 1st November, 1899, there would be at least \$5,000 available to the company as fruits of the underwriting agreement of defendants, and that these moneys would be employed to retire the note when it should fall due. Defendants, therefore, in reality assumed no further liability than their agreement with the company imposed. The minutes of the directors' meeting of 3rd November are unsigned, and there never was any formal acceptance under the seal of the company, or in writing over the signatures of its officers, of what though called the "agreement," was, in reality, the proposal or offer of defendants contained in the document signed by them and dated 31st October, 1899.

It is conceded that defendants made no sales of and procured no subscriptions for any part of the 100,000 shares of stock. But by way of defence to this action, in which the company seeks from them damages for breach of the agreement above outlined, defendants say:—

1. There was no formal acceptance under the seal of the company of the proposal of defendants, and, therefore, there never was a binding contract.

2. The principal consideration not having moved from the company, it cannot enforce this agreement.

3. That the agreement is in contravention of secs. 5 and 7 of the Ontario Mining Companies Act, inasmuch as the company did not pass a by-law under sec. 5 fixing and declaring the rate of discount at which such 100,000 shares should be issued.

4. That by permitting stock to be offered for sale at 5 cents per share and less during the period in which defend-