

The judgment of the Court was delivered by RIDDELL, J.:—
... On the 9th November, 1906, the plaintiffs agreed to transfer all their right in mining claim the south-west quarter of the north half of lot 4 in the 12th concession of the township of Loraine to Thomas Clark, of Buffalo, for \$5,000, payable in instalments, \$2,000, \$2,000, and \$1,000. The plaintiffs had not yet obtained the title to this land.

On the 12th November, 1906, Neil, acting for the plaintiffs, made an agreement with Woodward and Parker, two of the defendants, reciting that Woodward and Parker had effected a sale of the south-west quarter aforesaid, and the south-east quarter of the north half of lot 4 in concession 12, and that Neil had agreed to pay them a commission. The agreement is to pay (in case the sale goes through) to Parker and Woodward \$2,000 on the 20th November, 1906, \$1,000 on the 20th February, 1907, \$500 on the 20th March, 1907, and \$500 on the 20th April, 1907—but, if title cannot be made to the south-west quarter, and the sale is carried out by Clark, a further commission of \$1,000. If Clark defaults, then Parker and Woodward may take his place in the sale, on the same terms as Clark.

Clark did default; and Parker and Woodward paid \$4,000 to the plaintiffs. . . .

Parker and Woodward got Culver, the third defendant, interested; he was a large shareholder in the Culver Silver Cobalt Mines Limited. It was arranged that the company should buy the property, paying \$400,000 in paid-up stock of the company to Parker and Woodward, and \$16,000 of paid-up stock to the plaintiffs. The plaintiffs, however, required to be paid to them another \$2,000 in cash—and this was paid to them by Woodward and Parker.

Thereupon, on the 25th March, 1907, an agreement in writing between the company and the plaintiffs was made, whereby the plaintiffs, in consideration of 16,000 fully paid-up shares of \$1 each, transferred to the company all their interest in the two claims.

The substance of the transaction clearly was that the plaintiffs conveyed to the nominee of Parker and Woodward, receiving as in full payment of the balance due for the property the \$2,000 paid . . . and the agreement of the company to issue to them \$16,000 paid-up stock—while Parker and Woodward were to receive for their interest in the property, from the company \$400,000 paid-up stock.

At the same time the agreement sued upon was entered into—25th March, 1907.