

the 1st day of January, 1909; \$30,000 on the 1st day of April, 1909; \$30,000 on the 1st day of July, 1909; and \$20,000 on the 1st day of October, 1909; and the delivery to ourselves or our nominees of 74,000 shares of fully paid non-assessable stock in a company to be organised on the property above mentioned, such stock to be delivered immediately after the formation of the company. This offer is given subject to the option at present existing to Mr. J. Carling Kelly, dated the 19th day of May, 1908, and subject also that acceptance be made on or before Monday the 13th day of July instant at 6 o'clock p.m."

This offer was accepted on the same day by E. Kenyon Stow, the plaintiff, as follows: "I hereby accept the above offer and undertake to complete the purchase and make the payments as above stated when formal documents signed."

On the 18th September, 1908, the defendants Currie and Otisse transferred the mining claim above referred to, to the defendants Warren, Gzowski, and Loring, who subsequently transferred it to the defendants the Otisse Mining Company.

The plaintiff alleged that these transfers were made in fraud of him, and with the knowledge of all the defendants, and asked to have the transfers set aside and to have it declared that the plaintiff was entitled to a transfer under the offer and acceptance above set out, and to compel the defendant company to transfer to him.

The plaintiff also claimed damages against all the defendants for fraud and conspiracy, and against the defendants Currie and Otisse for breach of contract, and other relief.

The defendants Currie and Otisse pleaded that the negotiations of July, 1908, did not form a contract, and, if a contract was made thereby, it was conditional on a formal agreement being executed, and time was impliedly made the essence thereof; that no formal agreement was ever executed; and the defendants never became liable to transfer the claim to the plaintiff.

There were other defences, not necessary to refer to.

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and CLUTE, JJ.

G. H. Watson, K.C., and W. M. Douglas, K.C., for the plaintiff.

G. F. Shepley, K.C., and R. S. Robertson, for the defendants Currie and Otisse.

I. F. Hellmuth, K.C., and Eric N. Armour, for the defendants Warren, Gzowski, and Loring.

F. Arnoldi, K.C., and D. D. Grierson, for the defendants the Otisse Mining Company.