

is in any way helped by the fact that the plaintiffs may have thought that John Maughan & Son would have been themselves purchasers of the orders required in their business. If it was intended that the money orders should only be used in the business, the agreement actually signed does not carry out the intention.

The appeal should be allowed and the judgment of Riddell, J., restored, with costs throughout.

MOSS, C.J.O., agreed in the result reached by MIDDLETON, J., for reasons stated in writing.

GARROW and MACLAREN, J.J.A., also concurred.

MEREDITH, J.A., dissented, for reasons stated in writing.

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JUNE 30TH, 1910.

PURSE v. GOWGANDA QUEEN MINES LIMITED.

*Company—Subscription for Shares—Contract under Seal—Action for Relief from—Fraud and Misrepresentation by Agents — Non-existent Company—Parties—Sale of Mining Claims to Company at Excessive Price—Absence of Prospectus—Allotment of Shares—Calls.*

Appeal by the plaintiff from the judgment of BOYD, C., who tried the action without a jury, dismissing it.

The object of the action was to relieve the plaintiff from a contract under seal to take 5,000 shares of the capital stock of the defendant company.

The statement of claim set forth that the defendants, "through their agent," procured the plaintiff to sign a subscription for 5,000 shares, and on the 30th December notified him that he had been allotted 5,000 shares, and thereafter placed him upon the register of shareholders, and called upon him to make payment in respect of calls upon the said shares, and that the subscription was obtained by fraud and misrepresentation and fraudulent concealment of material facts "on the part of the defendants and their agents." A certain agreement of the 7th December, 1908, between Henry Barber, Robert Greig, and the American Securities Limited, which was referred to in the contract signed by the plaintiff and annexed thereto, was then referred to, and it was alleged