

for payment, upon the ground that he was then unable to meet his obligation, I could not have helped him, nor would he have had any equity in his favour. His accidental misunderstanding of the date fixed for payment is another matter.

The defendant will, therefore, stand relieved from the consequences of his default, upon paying within a week: (a) the \$75 and interest upon this sum, at five per cent., until paid, computed from the 28th December, 1910; (b) the costs of the writ of possession and incidental to the issue, fixed at \$10, and the Sheriff's fees in addition; (c) the costs of the motion, fixed at \$25; (d) and upon his paying now, as an evidence of his good faith, the next instalment of \$75, which, under the judgment, falls due on the 28th June, 1911.

DIVISIONAL COURT.

JANUARY 6TH, 1911.

NEIL v. WOODWARD.

*Contract—Undertaking of Defendants to Sell Company Shares—Failure of Plaintiffs to Furnish Shares—Counterclaim—Fraud—False Representations Inducing Purchase of Property for Company—Payment by Defendants Acting on Representations—Failure to Shew Fraud—Finding of Trial Judge—Appeal—Leave to Amend—New Trial—Election.*

Appeal by the plaintiffs from the judgment of TEETZEL, J., dismissing the action and allowing the counterclaim, both with costs.

The plaintiffs, a partnership, sued the three defendants on a contract, dated the 25th March, 1907, whereby the defendant agreed that they would undertake the sale for the plaintiffs of 16,000 shares of stock of the Culver Silver Cobalt Mines Limited, at not less than par, within four months, and would themselves buy at par any shares they could not sell.

The defendants set up that they were not furnished with the stock; that, in any event, they were induced by fraud to enter into the contract; and they counterclaimed for \$6,000.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

R. McKay, K.C., for the defendants.

G. H. Watson, K.C., and C. H. Porter, for the plaintiffs.