

performance thereof. If an action is not commenced within that time, the motion will be disposed of.

HENROTIN v. FOSTER—SUTHERLAND, J.—FEB. 7.

Contract—Transfer of Mining Claims — Consideration — Action to Set aside Agreement—Company-shares.]—Action by Charles M. Henrotin, a mining engineer, against Clement A. Foster, also a mining engineer, Henry Cecil, a promoter, and the Burnside Gold Mines Limited, a company incorporated in England, having a charter to carry on business in Ontario. The action arose out of dealings with mining claims Nos. L-1821, Label, and L-1822 and L-1823, Teck, in Ontario. The plaintiff's claim was to set aside an agreement made on the 9th May, 1913, between the plaintiff and the defendant Cecil, and to have the mining claims mentioned restored to the plaintiff, on the ground of total failure of consideration; or, in the alternative, for \$150,000 damages and the delivery of 30,000 shares in the defendant company and the payment of the loss sustained by the plaintiff or that will be sustained by him by the non-delivery of the shares at the time of the incorporation of the company, and an accounting for all shares in the defendant company, or in any other company, and for all moneys received for the transfer of the mining claims aforesaid. All the defendants defended and set up counterclaims. The action was tried without a jury at Toronto. The learned Judge stated the facts and reviewed the evidence, in a written opinion of great length; he made certain findings of fact, upon which, he said, the action might be dismissed. As arising, however, out of the issues raised in the pleadings and the evidence at the trial, he thought that he might properly find and determine, as he did, that, owing to the default in payment of the defendant Foster of the instalments due under the agreement of the 22nd January, 1914, that contract had been put an end to, and the plaintiff restored and relegated to his rights under the agreement of the 16th April, 1913, against the defendants Foster and Cecil and the defendant company as the assignee of the claims with notice of these rights; and that the plaintiff was entitled to his proportionate share of the $7\frac{1}{2}$ per cent. of all stock, if any, received by the defendants Foster and Cecil or to be received by them or of other consideration received by them, or either of them, in lieu of stock. If the plaintiff is content to take a judgment so deter-