

cash and two notes of \$7,500 each to represent the balance of the cash payment. The agreement as altered was accepted by the plaintiffs and also executed by them, and is the agreement in question herein.

Under the former agreements or options the vendors had been assisting Harris, the representative of the defendant, in his operations and work upon the property.

The defendant having thus paid the cash payment of \$20,000, went into possession and continued to investigate, explore and mine. Later on at their maturity on the 8th October, 1908, and 8th April, 1909, he paid the said two notes. Having thus paid all the cash consideration, he on or about the 12th April, 1909, obtained from the plaintiffs written transfers of their right, title, and interest in and to the respective mining properties subject to the royalty as already mentioned. He was then owner subject to the payment of the royalty.

The first instalment of royalty under the agreement of \$9,750 being 15 cents on 65,000 tons, came due, as the plaintiffs allege, on the 8th April, 1911, and was not paid by the defendant. On the 29th May, 1911, this action was commenced by writ of summons.

In the course of the litigation an order was made by Clute, J., as follows:—

“Upon the application of the plaintiffs on the 23rd of November, 1911, to postpone the trial of this action.

Upon the application of the defendant on the 12th day of January, 1912, for an order changing the place of trial of this action from the town of Sudbury to the city of Toronto, and directing that the case be set down without further notice of trial for the non-jury sittings commencing at the city of Toronto on the 15th day of January, 1912, and for such further and other order as to this Honourable Court may seem meet:

Upon reading the affidavit of Leighton Goldie McCarthy, filed, and the exhibits therein referred to and the affidavit of James Arthur Mulligan, filed, and the exhibits therein referred to, and the pleadings and proceedings in the action:

And it appearing that if the trial of this action be postponed until the next sittings of this Honourable Court, to be held at the town of Sudbury, a further sum of \$9,750 will, if the plaintiffs' contention is upheld, accrue due under