This was not a dishonest scheme on the part of the defendant, or of either party in fact. As a preliminary, and to enable the plaintiff to speak from actual knowledge, the defendant took the plaintiff to the mine, and the plaintiff carefully inspected and reported his opinion to the plaintiff before any arrangement for sale of stock was come to. The report was favourable, and upon the return journey the plaintiff's agency was partly arranged for as above mentioned. It is not suggested that anything dishonest was contemplated, that any misrepresentations were made, or that any purchaser was disappointed. It is material to refer to this only in view of the conflict between the parties as to the scope and terms of the engagement. The agreement founding the plaintiff's rights is partly in writing, partly verbal, and in part to be implied from the manner in which the parties dealt with each other.

On the way out from the mine, after inspection, and after the plaintiff had verbally given his opinion, and indicated that he could honestly recommend it to purchasers, the defendant gave the plaintiff a memorandum in writing in these terms: "Oct. 28th, 1910. I hereby appoint R. A. Harris . . . agent to sell 4,000 shares of Golden Rose stock at par $1 per share, for which I agree to give him 1,000 shares of Golden Rose stock for his commission . . ." This was signed by the defendant.

The plaintiff swears that, almost immediately after delivery of this paper to him, and before any action had been taken, it was verbally agreed that he would have the exclusive right to sell stock in Orillia. The defendant denies this, asserts that the only agreement of any kind between them is contained in the writing, and pleads the Statute of Frauds. I find as a fact that the defendant agreed to this added term, and also that the agreement, at the instance of the defendant, was varied in many respects; and particularly the limitation upon the number of shares to be sold by the plaintiff and the price at which they were to be sold was removed. I find, too, that the plaintiff agreed that sales made within a limited specified period were to be without commission. The evidence that the plaintiff was to have an exclusive right of sale in Orillia is overwhelming, and as to all the superadded terms claimed or admitted by the plaintiff, the evidence is so clear and satisfactory that I would feel compelled to give effect to them upon the authority of Marsh v. Hunt (1884), 9 A.R. 595, if it were necessary to invoke the principle of that case; but I do not think it is. Neither do I see