

that he saw Mr. A. M. Wiley shortly afterwards, who told him he was getting a commission "on this deal if it goes through;" that it was 5 per cent. in cash upon the \$3,000,000, viz., \$150,000, and the same amount in stock. Mr. Montgomery saw that the stock payment was left in a manner that might lead to confusion, and saw the defendant and Von Hogen on 28th November, and again saw Mr. A. M. Wiley on the evening of the same day, and informed him that he had seen the defendant and Von Hogen, and that their understanding of the matter was that Mr. Blum was to pay him \$150,000 out of the \$3,000,000 cash when it was paid to him, and Von Hogen was to give him \$150,000 stock in the Manhattan Cobalt Company when some \$6,000,000 stock of the Laurentian Company was conveyed to the Manhattan Company. Mr. Montgomery says that he then asked Mr. A. M. Wiley if he agreed to that as being the terms of the agreement for the payment of the commission, Mr. Wiley saying he did, and that that was satisfactory, also that he (Montgomery) told Mr. Harold A. Wiley of this conversation and arrangement with Mr. A. M. Wiley, and he (Harold A.) said that any arrangement his brother made was satisfactory. Mr. Harold A. Wiley does not contradict Mr. Montgomery as to this; nor does he contradict the defendant, who stated that he (the defendant) told him on 10th November that the \$150,000 was not to be paid until he got the \$3,000,000 cash.

I have no alternative, therefore, but to find that this cash commission was only to be paid if the defendant got the \$3,000,000, and, as he has not got it, the action cannot be maintained.

A company was organized in Ontario, and the lands conveyed to that company. Another company was organized in Maine, and the stock of the Canadian company is now held by the Maine company, in which latter company the defendant has \$12,000,000 of stock, and this represents the 1,000 acres of mining land covered by the option. Von Hogen holds stock in the Maine company, and is an officer in that corporation, but I find that the defendant made no sale of the lands pursuant to the terms of the option, nor did he refuse at any time to convey according to its terms, or do anything to prevent the sale contemplated by it from being carried out.

Mr. Shepley relied upon *Passingham v. Ring*, 14 Times L. R. 392, but I am unable to see that it assists the plaintiff. In the *Ring* case the defendant continued the negotiations