confirmatory of the plaintiff's case, and the action was disposed of by allowing defendant's application for a nonsuit.

Held, that the rejection of the evidence tendered by the plaintiff in rebuttal could be sustained only on the ground that the onus of proof on the issues to which it related was at the outset of the case on the plaintiff; and that the course adopted by the learned trial judge admitted the evidence for the defendant to and excluded the evidence for the plaintiff from review by the Court of Appeal.

Decision of BOLE, Co. J., reversed.

Macdonell, for plaintiff. *Bowes*, for defendant.

Hunter, C.J.] MORTON *v.* NICHOLS. [Feb. 26.

Contract—Specific performance—Option to purchase mineral claim—Time of the essence—Tender of instalment of purchase money.

Where the contract is for the sale of property of a fluctuating value, such as mineral claims, although there is no stipulation that time shall be of the essence of the contract, yet by the very nature of the property dealt with, it is clear that time shall be of the essence.

Where the transaction is an option, or unilateral contract, for that reason time is to be taken as intended to be of the essence.

Where there is a stipulation to pay money on a particular day, and no place is agreed upon, it is the duty of the payor to seek out and find the payee if he is within the jurisdiction.

R. T. Elliott, for plaintiffs. *W. J. Taylor*, K.C., and *Twigg*, for defendant.

Full Court.] HOPPER *v.* DUNSMUIR. [Jan. 25.

Costs—"Event," what constitutes.

By s. 100 of the Supreme Court Act, 1904, the Legislature expressly intended to provide an automatic code for the disposition of the costs of all trials, hearings and appeals in the Supreme Court, and to sweep away all discretion save in relation to the specific exceptions set out in the said s. 100.

Bodwell, K.C., for plaintiff. *E. P. Davis*, K.C., and *Luxton*, K.C., for defendants. *Sir C. H. Tupper*, K.C., for intervenant.