

mine, of which they were owners, for the sum of \$70,000. D thereupon organized a company to purchase the mine. The persons who associated themselves with D for this purpose, with the exception of T and I, were led to believe that the price to be paid for it was \$100,000. T was induced to become a member and use his influence to persuade others to do so by the payment of a commission. I learned of the arrangement after becoming a member and demanded and received a commission, in consideration of which he induced others to take an interest. There was nothing to connect defendants with the dealings between D and his associates down to the date of a meeting held for the purpose of completing the purchase, when defendants transferred the property to a trustee nominated by the purchasers, for the sum of \$100,000, one-half to be paid in cash at the time, the balance to be paid in instalments at dates agreed upon. On the same date defendants paid D the sum of \$5,000 cash and entered into a private agreement with him in writing, by which they undertook to pay him the further sum of \$25,000 when the last instalment of the purchase money was paid. Plaintiffs got possession of the mine on the 30th August, 1889, and worked it profitably until December, 1890, when a fault in the lead was met, and operations were discontinued. In October, 1890, the directors received information of the facts, of which they had previously heard rumours, in connection with the purchase. In January, 1891, the directors negotiated with one of the defendants for a lease of the mine, and, failing to agree on terms, intimated that proceedings would be taken to rescind the sale. The bringing of the suit for this purpose was authorized in October, 1891, but the suit was not actually commenced until January, 1892.

Held (Ritchie, J., dissenting): that the delay in commencing proceedings was not unreasonable under the circumstances of the case, and did not bar the claim of the plaintiffs (and as to delay in bringing action see *Beatty v. Neelon*, 13 Can. S. C. R., 1).

Per Townshend, J.—The plaintiffs were not bound to act on mere rumours, or on information received, until they had good grounds for believing it correct.

Partly on account of the delay in commencing proceedings, the abandonment of the mine, the caving in of part of the works, and partly on account of the nature of the title from the Crown, under which the property was held, it was impossible to restore the defendants to their original position.

Held, that rescission should not be decreed, but that plaintiffs should recover the proportionate amounts contributed by them to make up the sum of \$30,000, received by D and his associates T and I.

Per Ritchie, J.—Under the circumstances, plaintiffs were not entitled to rescind the sale, but their claim, if any, was for compensation in damages.

Per McDonald, C. J.—It was incumbent on defendants, in view of the facts brought to their knowledge, to have put plaintiffs upon inquiry.

Per Townshend, J.—That D was a partner with his associates in the purchase of the mine, and could not obtain the advantage sought by him without a full disclosure of the facts.

Also, that what D obtained from defendants was not an option, in the usual sense, but an agreement to allow him to retain all that he obtained from the sale over and above the price fixed; that the circumstances rebutted the idea of a sale to D, and that defendants were responsible for his fraudulent act. *Northrup Mining Co. v. Dinock*, 27 N. S., 112.