

tain districts. M. was also agent for the D. Engine Co., manufacturers of steam engines and steam machinery, at Toronto.

C. T. & Co., lumber manufacturers at Rat Portage, ordered from M. a saw-mill and machinery complete, of a specified cutting capacity, for which they agreed to pay a fixed price. M. agreed by letter to furnish such mill and machinery for the price named.

M. procured the mill and machinery from P. T. & Co., and the power for working it from the D. Engine Co., and delivered them to C. & M. at Rat Portage. It proved, however, that the mill would not cut the quantity of lumber agreed on, and P. T. & Co. undertook to put in new machinery, but on C. & M. refusing to make certain payments before delivery of the same, it was not put in. In an action by C. & M. against P. T. & Co., for breach of warranty :

*Held*, (affirming the judgment of the Court below, RITCHIE, C. J., and FOURNIER, J., dissenting), that the contract by M. for the sale of both the mill and power as a single transaction and for a lump sum, was in excess of his authority as agent of P. T. & Co. ; and the contract was, therefore, one with M. personally, and the judgment of nonsuit in the Court below was right.

*Held*, also, that unless both P. T. & Co. and the D. Engine Co. joined in adopting the contract and in warranting each other's goods as well as their own, there could be no ratification of the sale by either.

Appeal dismissed with costs.

*Aikin, Culver & Hamilton*, solicitors for appellants.

*J. W. E. Darby*, solicitor for respondents.

Ontario.]

PALMER V. WALLBRIDGE.

*Mining lease—Construction of—Reservation of rent—Conditional on quantity of ore raised—Dead or sleeping rent—Right to terminate lease.*

In a lease of mining lands the *reddendum* was as follows:—"Yielding and paying therefor unto the party of the first part one dollar per gross ton of the said iron stone or ore for every ton mined and raised from the said lands and mine, payable quarterly on" (specifying the days).

The lessees covenanted as follows:—"That they will dig up and mine and carry away in each and every year during the said term a quantity of not less than 2000 tons of such stone or iron ore for the first year, and a quantity of not less than 5000 tons a year in every subsequent year of the said term, and that they will pay quarterly the sum of one dollar per ton as aforesaid for the quantity agreed to be taken during each year for the term aforesaid." There was a proviso in the lease that in case ore should not be found or obtained in reasonable or paying quantities, the lessee could terminate the lease, and also a provision that if the rent paid in any quarter should exceed the quantity of ore raised, such excess should be applied towards payment of the first quarter thereafter in which more than the said quantity should be taken.

*Held*, affirming the judgment of the Court of Appeal, RITCHIE, C. J., and FOURNIER, J., dissenting, that the proper construction of these provisions was to make the lessees liable to pay the rent reserved in any event, and not having exercised the right of terminating the lease, they were not relieved from the rent by the fact of ore not being found in reasonable or paying quantities.

Appeal dismissed with costs.

*Bell & Biggar*, solicitors for appellant.

*Francis T. Wallbridge*, solicitor for respondent.

Ontario.]

MERCHANTS BANK OF CANADA V. MCKAY.

*Surety—Bank customer—Course of banking business—Renewals of notes—Forged Renewals—Negligence of Bank—Relief of Surety.*

M. became surety to a bank to secure a named indebtedness of a firm dealing with the bank and also future advances. By the terms of his agreement of suretyship M. was to be liable for all promissory notes, etc., of the customer of a certain date, and "all renewals, substitutions and alterations thereof." The renewals of certain of the notes proved to be forgeries. In a suit by the bank against the surety:

*Held*, per RITCHIE, C. J., FOURNIER and TASCHEREAU, J.J., affirming the judgment of