

upon the said mining claim for the payment of the royalty hereinbefore described.

5. The vendors shall not require to do any further work on the said claims or be at any further expense with respect thereto, but the purchaser shall enter into possession of the said claims forthwith upon the execution of these presents, and shall until the payment in full of the said sum of \$35,000 perform the necessary work and do all other necessary things and make all payments necessary to preserve the title to the said claims at present held by the vendors and the other discoverers.

6. Time shall be strictly of the essence of this agreement, and upon default being made in the performance of the work and other conditions in the immediately preceding paragraph hereof mentioned, or in the payment of the said sum of \$35,000 or any part thereof, this whole agreement shall become null and void at the option of the vendors, and the purchaser shall actually forfeit all work done and all moneys paid before the date of such default and shall abandon the possession of, and all claims to, the said mining claims without being entitled to any recompense therefor.

7. The purchaser covenants with the vendors that he will well and truly pay or cause to be paid to the vendors the said sum of \$35,000 at the times and in the manner above set forth and also the said royalty at the said rate annually on the 8th day of April in each year after the expiration of two years from the date hereof as above stipulated."

The defendant submitted said draft agreement to his solicitors, who suggested two amendments thereto as follows: Between the words "year" and "provided" in said paragraph 3 he inserted the following: "Provided, however, that shipments in excess of 65,000 tons in any year shall to the extent of such excess be credited in reduction of shortages in any subsequent year or years," and striking out from paragraph 4, all the words after "nominees" and inserting in place thereof the following, "and to contain a reservation in favour of the vendors herein named of the royalty above specified unless the purchaser has previously exercised his option to acquire such royalty for \$25,000."

The solicitors for the defendant engrossed an agreement in duplicate with said variations; the defendant executed same and thereupon the same was forwarded to the plaintiffs' solicitors accompanied by a draft for the \$20,000 in