

being \$150,000 in cash to be paid by defendant, and \$150,000 stock in the company, which was to be arranged by Von Hogen. It is the cash payment of \$150,000 that is now in question.

Defendant's version of the arrangement about the payment of commission is, that he told plaintiffs he had given Von Hogen a 30-day option, and had received a \$10,000 cheque, which was to be forfeited if the payment were not made as provided for in the option; that he then asked plaintiffs what commission they expected, and was told it should be 10 per cent. on the \$3,000,000 when it was paid; that Von Hogen said it might be divided, the defendant paying \$150,000 cash, and he, Von Hogen, giving them \$150,000 in stock; that the cash payment was not to be made until defendant received the \$3,000,000; and that this was agreed to. Defendant says he has not been paid the \$3,000,000; that, if he had, he would have paid the \$150,000 he had agreed to pay.

So, it seems to me, the case turns upon the single point whether the agreement was for payment of the \$150,000 unconditionally, or whether it was to be paid only when the \$3,000,000 was received by defendant. Von Hogen was not called, and so we have the evidence of 2 only of the 4 parties to the arrangement. Plaintiffs contend that they bought about a sale of the property, and that it was no fault of theirs if the money was not paid, and that it was the duty of defendant to obtain payment. I do not think the document signed was an agreement that could be enforced against Von Hogen, and, as I read it, it seems to me a mere option for the specified time, for which Von Hogen was paying \$10,000; the provision for forfeiting the cash payment if the sale was not completed would be nonsense upon any other construction, as would also be the provisions regarding the inspection of the mine and the drawing and execution of the papers immediately after such inspection.

It was known by the plaintiffs that Von Hogen was a promotor, and would have to interest capitalists in New York before a transaction of this magnitude could be completed. During the evening of the day the document was signed, Mr. Montgomery, the defendant's solicitor, was called in, and he says that in the presence of all parties, Von Hogen said he was going at once to New York to put the matter before his people, and, if they were satisfied with it, an inspection would follow, and then they would know whether the deal would go through or not. Mr. Montgomery also says