

drafted, 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."

There is another term of the contract, also, which was for his special protection and advantage, which is as follows: "Provided, also, that the purchaser shall have the right, at any time, to purchase such royalty from the vendors for the sum of \$25,000 cash." He took upon himself, under the terms of the contract, "the burden of quantity and failure."

I think the case of *Palmer v. Wallbridge* (1888), 15 S.C.R. 650, has much application. It was there held "that the lease contained an absolute covenant by the lessee to pay the rent in any event; and, not having terminated the lease under the above proviso, he was not relieved from such payment in consequence of ore not being found in paying quantities." Here, too, there is an absolute covenant to take out a named quantity of ore and pay a definite amount of royalty thereon. Here, too, there is a clause permitting the purchaser to put an end to the royalty by payment of a lump sum in lieu thereof. Reference also to *Phillips v. Jones* (1839), 9 Sim. 519; *Marquis of Bute v. Thompson* (1844), 14 M. & W. 487; *Mellers v. Duke of Devonshire* (1852), 16 Beav. 252; *Lord Clifford v. Watts* (1870), L.R. 5 C.P. 577; *Gowan v. Christie* (1873), L.R. 2 Sc. App. 273; *Battle v. Willox* (1908), 40 S.C.R. 198; and *Leake on Contracts*, 6th (Can.) ed. (1912), p. 490.

The plaintiffs will, therefore, have judgment for the sum of \$34,750, with interest, paid into Court under the order of Clute, J., as aforesaid, together with subsequent interest, and all parties to be otherwise discharged and released from the terms and conditions of the agreement in question. The plaintiffs will also have their costs of suit.

FALCONBRIDGE, C.J.K.B.

JULY 4TH, 1912.

CLARK v. WIGLE.

Contract—Interlineation—Effect of—Option or Completed Agreement—Sale of Shares—Evidence—Onus—Corroboration.

Action for specific performance of a contract.

The action was tried before FALCONBRIDGE, C.J.K.B., without a jury, at Sandwich.