

The action was tried without a jury at Ottawa.
A. Lemieux, K.C., for the plaintiff.
S. R. Broadfoot, for the defendant.

SUTHERLAND, J., in a written judgment, said, after stating the facts, that it was contended for the plaintiff that no evidence was admissible tending to shew that his agreement was subject to the pooling agreement. The learned Judge, following *Long v. Smith* (1911), 23 O.L.R. 121, took the evidence of both parties on this point; and was of opinion that he should give effect to the testimony of the defendant that the agreement was subject to the condition that the plaintiff could not demand delivery of the share-certificates without the consent of the parties to the pooling agreement. The agreement itself recited that the defendant was a member of the syndicate. Again, the shares were to be delivered "when stock shall be issued." Construing this literally, the time had not yet arrived—and probably, the company being to all appearance defunct, never would arrive—"when stock shall be issued." That expression was at least indefinite and ambiguous. The defendant gave the explanation and cleared up the ambiguity.

The agreement was made in September, 1909; there had been such laches as should weigh against the plaintiff in considering his claim.

The letters patent incorporating the company were issued in January, 1907, under the provisions of the Ontario Companies Act, R.S.O. 1897 ch. 191, and subject to the provisions of the Ontario Mining Companies Incorporation Act, R.S.O. 1897 ch. 197. The plaintiff urged the absence of a prospectus, and referred to an Act respecting Prospectuses issued by Companies (1906), 6 Edw. VII. ch. 27. The learned Judge said that he was not sure that the provisions of the Acts referred to applied to this company so as to have rendered it necessary to issue a prospectus or to affect the dealing with the shares of the company. This point was not taken in the plaintiff's pleadings, and no amendment was actually applied for; in any event, an amendment should not be allowed: *Gowganda-Queen Mines Limited v. Boeckh* (1911), 24 O.L.R. 293.

Action dismissed with costs.