

SEPTEMBER 19TH, 1902

C. A.

BEAM v. BEATTY.

BUNTING v. BEATTY.

*Infant—Bond with Penalty—Void or Voidable.*

Appeal by defendant from judgment of FERGUSON, J. (3 O. L. R. 345, ante 54) in favour of the respective plaintiffs for damages upon bonds given by defendant in connection with the sale of stock in a company, the defence being that the defendant was an infant at the time of making the bond, which was therefore not enforceable and incapable of ratification.

C. A. Masten and F. C. McBurney, Niagara Falls, for appellant.

G. Lynch-Staunton, K.C., and A. W. Marquis, St. Catharines, for plaintiffs.

The judgment of the Court (OSLER, MACLENNAN, MOSS, GARROW, J.J.A.) was delivered by

GARROW, J.A.:—There are two points, both questions of law, namely, (1) whether a bond with a penalty given by an infant is void or only voidable, and (2), if voidable, is there evidence of ratification?

Mr. Masten, counsel for the appellant, in an able and exhaustive argument, referred us to a number of authorities to establish his main proposition, that such a bond is wholly void, and therefore incapable of ratification, and, after an examination of these and of such other cases as I could find, my opinion is that his contention is well founded.

The opposing view is based very largely, apparently, upon some expressions to be found in Pollock on Contracts, 5th ed., p. 59, quoted by FERGUSON, J. This opinion is apparently also approved by another learned author—'Anson on Contracts, 9th ed., p. 113.

On the other hand it is stated as the law in Addison on Contracts, 9th ed., p. 379, that "no penal obligations entered into by infants are enforceable, as it is not necessary for them, nor can it be for their benefit and advantage, to subject themselves to a penalty." While Leake on Contracts,