

interference. No explanation of the default is vouchsafed. A defence is filed in which charges of fraud are made and not a scintilla of evidence has been given to support them. Everything indicates that the position in which the defendant finds himself is the unexpected result of a piece of sharp practice on his part.

With the rights as between the plaintiff and Vanderwater I am not here concerned, for he is no party to this litigation. I can see nothing which justifies the retention by the defendant of this \$1,000 for which he has given nothing.

HON. MR. JUSTICE BRITTON.

JUNE 13TH, 1914.

WALLACE v. MCKAY, ET AL.

6 O. W. N. 503.

Master and Servant—Company—Incorporated, but not Organized or Operated—Contract of Hiring—Manager, Salary of—Settlement of Claim.

A company had been incorporated, but never organized or operated. The plaintiff, who was cognizant of this, had by an agreement in writing with the defendants, who signed personally, been engaged as general manager.

BRITTON, J., *held*, the defendants were not liable personally for salary and damages for breach of the agreement to pay the same on the ground that the condition precedent to payment, viz., the organization and operation of the company, had not taken place.

Action brought to recover \$1,150.30 alleged to be the balance of six months' salary and expenses up to 23rd October, 1913, owed by defendants to plaintiff. The plaintiff further claimed \$1,000 damages for breach of contract of hiring.

Tried at Brantford without a jury.

W. S. Brewster, K.C., for plaintiff.

E. F. B. Johnston, K.C., for defendant McKay.

HON. MR. JUSTICE BRITTON:—The contract relied upon is dated 22nd April, 1913, and is as follows:

"We, the undersigned, agree to engage H. J. Wallace of Brantford to act as general manager for the Investment Company for a period of one year from date. The said H. J. Wallace to be guaranteed an annual salary of \$3,000 per