

The appeal was from the order of the 21st December, and was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

R. McKay, K.C., and J. M. Hall, for the defendants, appellants.

L. Duncan, for Bardessano, respondent.

THE COURT held that, although the District Court Judge had jurisdiction, under Rule 217, to entertain the motion to set aside his own ex parte order, he should not have set it aside, upon the facts. Bardessano, by representing himself as the plaintiff, a representation upon which the defendants acted, was estopped from saying that he was not the real plaintiff.

Appeal allowed with costs here and below.

MARCH 22ND, 1915.

HAY v. COSTE.

Contract—Construction—Scope—Partnership — Contemplated Profits from Oil Leases and Agreements—“Extensions”—Profits from Natural Gas Leases and Agreements—“Oil and its Products”—Findings of Fact of Trial Judge—Appeal.

Appeal by the plaintiff from the judgment of MIDDLETON, J., 6 O.W.N. 443.

The appeal was heard by FALCONBRIDGE, C.J.K.B. HODGINS, J.A., LATCHFORD and KELLY, JJ.

J. W. Bain, K.C., and Christopher C. Robinson, for the appellant.

C. A. Masten, K.C., and G. C. Cooper, for the defendant, respondent.

The judgment of the Court was delivered by KELLY, J.:—The plaintiff sought an accounting of all profits made by the defendant or for his benefit, either directly or indirectly, from oil and gas discoveries, on the ground that a partnership existed between them entitling him to a one-half interest in all profits from such discoveries, and from any and all leases, rights, agree-