

The covenant was as follows:—

“6. The party of the first part agrees with the party of the second part that he shall not directly or indirectly carry on or be engaged in the hotel business in the said city of Stratford.”

E. Sydney Smith, K.C., for plaintiff.

J. C. Makins, Stratford, for defendant.

FALCONBRIDGE, C.J.:—I find upon the evidence that defendant did not directly or indirectly carry on or be engaged in the hotel business in the city of Stratford. He gratuitously assisted one Helm to raise money and otherwise to purchase and carry on such a business, but he neither had nor has any interest in it by way of partnership nor in any other way pecuniarily. Defendant did act as bar-tender for Helm for two months, from about 14th November to about 23rd January, and was paid \$100 wages for this service, and there is nothing more due to him.

The writ was not issued until 22nd April last. The circumstances were very suspicious, and I was invited by plaintiff's counsel to find that the whole scheme was a fraudulent and colourable one, but I cannot do so upon the evidence.

Under all the circumstances, while I dismiss the action, I do so without costs.

I refer to *Roper v. Hopkins*, 29 O. R. 580, and cases there cited; *Allen v. Taylor*, 19 W. R. 556; *Ross v. Anderson*, 9 O. W. R. 682. The covenant in the last mentioned case was much more sweeping than the present one.

MABEE, J.

OCTOBER 10TH, 1907.

TRIAL.

WILEY v. BLUM.

Principal and Agent—Agent's Commission on Sale of Mining Lands—Contract—Condition—Payment of Part of Price—Option—Abandonment.

Action to recover \$150,000 as commission payable upon the sale by defendant of some gold mining properties in the Rainy River district.