

MIDDLETON, J.

JUNE 25TH, 1915.

## \*BROWN v. COLEMAN DEVELOPMENT CO.

*Statute of Frauds—Moneys Advanced to Company—Oral Promise of President of Company to Repay — Contract of Suretyship—Evidence.*

Appeal by the defendant Gillies from the report of Mr. J. A. C. Cameron, Official Referee, whereby he found the plaintiff entitled to recover from the appellant \$7,000 and interest from the 17th April, 1908.

The appellant sold a mining property to the defendant company in consideration of the allotment to him of the great bulk of the shares of the capital stock of the company. He was the president of the company, and the plaintiff was the secretary. The appellant made advances to the company to enable it to meet its liabilities. The plaintiff also advanced money, as he alleged, upon the promise of the appellant to repay it; the appellant denied the promise; but the Referee found that it had been made. The action was brought against both defendants to recover a large sum for salary and moneys advanced.

The appeal was heard in the Weekly Court at Toronto.

H. S. White, for the appellant.

H. E. Rose, K.C., for the liquidator of the defendant company.

W. M. Douglas, K.C., and S. W. McKeown, for the plaintiff, respondent.

MIDDLETON, J., said that, upon the evidence, he could not interfere with the finding of fact of the Referee. The learned Judge was of opinion, however, that the promise made by the appellant was in truth a promise to answer for the debt of the company, and that the Statute of Frauds afforded a defence: there being a principal debtor liable, the contract of the appellant was one of suretyship.

Reference was made to *Forth v. Stanton* (1869), 1 Wms. Saund. 220, 233; *Birkmyr v. Darnell* (1704); 1 Salk. 27, Sm. L.C., 11th ed., vol. 1, p. 299; *Lakeman v. Mountstephen* (1874), L.R. 7 H.L. 17, 24; *James v. Balfour* (1882), 7 A.R. 461; *Sutton & Co. v. Grey*, [1894] 1 Q.B. 285; *Harburg India Rubber Comb Co. v. Martin*, [1902] 1 K.B. 778; *Davys v. Buswell*, [1913] 2 K.B. 47.