

STIMSON V. BAUGH AND PROCTOR—MIDDLETON, J.—APRIL 22.

Contract—Promissory Note—Partnership—Liability—Fraud—Findings of Fact of Trial Judge.]—Action to recover \$28,750, the price of certain shares in a mining company, payable under an agreement of the 7th December, 1911, represented by a promissory note bearing date the 8th December, 1911, given pursuant to this agreement. The note, though signed in the name of E. L. Baugh & Co., was signed by the defendant Proctor; and it was said that there was no partnership between Baugh and Proctor, and that Proctor had not in fact authority to sign the note. The defence filed on behalf of Baugh set out that he was the sole member of the firm of E. L. Baugh & Co., and that Proctor was authorised by him to obtain an option upon the shares in question, upon such terms that there should be no liability beyond the sum of \$5,000 paid at the time of the giving of the option; that it was understood that the agreement which was executed was in truth an option, and, if it was not, there was no consideration for the payment of the \$5,000; and Baugh counterclaimed for that sum. Proctor denied the agreement and denied all liability thereunder or upon the note which he signed. By an amendment to his defence, made before the trial, Proctor set out that he was acting as sales-agent for the stock, being employed by the plaintiff, the defendant Baugh, and one McCaffery, and that he entered into this employment upon certain representations as to the value of the property, and that the agreement of the 7th December was made in reliance upon these representations and in reliance upon the commissions paid under the other agreements as affording a source of payment of any obligation under the agreement in question. He set out that he had been associated with the defendant Baugh in certain other transactions in partnership; and, although there was no partnership agreement in writing with Baugh, he understood that he was a partner with Baugh in the matters dealt with in the agreement. He denied liability upon the agreement because of certain false and fraudulent representations which, he alleged, brought about its execution. At the hearing, further amendments were made which greatly enlarged the matters to be investigated. Baugh set up that he was induced to enter into the agreement in question and certain earlier agreements by the fraud of the plaintiff, or by the fraud of McCaffery, for whose conduct, he alleged, the plaintiff was responsible. The learned Judge, after a lengthy examin-