

The Ontario Weekly Notes

VOL. IX. TORONTO, JANUARY 7, 1916. No. 18

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

DECEMBER 29TH, 1915.

*BROWN v. COLEMAN DEVELOPMENT CO.

Statute of Frauds—Moneys Advanced by Director of Company for Benefit of Company—Oral Promise of President of Company to Repay—Evidence—Nature of Contract.

Appeal by the plaintiff from an order of MIDDLETON, J., of the 25th June, 1915, allowing an appeal by the defendant Gillies from the report of an Official Referee: 34 O.L.R. 210.

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

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

H. S. White, for the defendant Gillies, the respondent.

RIDDELL, J., in written reasons for judgment, said that he found himself unable to agree with the conclusion that the promise undoubtedly made was one made by Gillies to answer the debt of the company so as to let in the Statute of Frauds.

The promise was, "You advance this money, and I will return it to you;" and that was an express contract of the respondent's own, and only his own. It was of no importance that some third person, corporation or otherwise, had the advantage of the advance: *Thomas v. Cook* (1828), 8 B. & C. 728; *Wildes v. Dudlow* (1874), L.R. 19 Eq. 198; *Guild & Co. v. Conrad*, [1894] 2 Q.B. 885 (C.A.); *Lakeman v. Mountstephen* (1874), L.R. 7 H.L. 17; *Mountstephen v. Lakeman* (1870), L.R. 5 Q.B. 613.

*This case and all others so marked to be reported in the Ontario Law Reports.