

BOOTH V. PROVINCIAL MOTORS LIVERY—FALCONBRIDGE, C.J.K.B.  
—JAN. 28.

*Contract—Share or Interest in Business—Written Agreement not Executed—Oral Evidence—Corroboration—Account—Valuation of Stock—Expert Testimony—Finding of Fact of Trial Judge.*—Action for a declaration that the plaintiff is entitled to a one-third interest in the business carried on by the Provincial Motors Livery, for an account, an injunction, and a receiver. The action was tried without a jury at a Toronto sittings. FALCONBRIDGE, C.J.K.B., in a written judgment, found the agreement set up in paragraph 4 et seq. of the statement of claim to have been well-proved. The plaintiff's evidence was corroborated, and his demeanour was to be preferred to that of the defendant Allen. That agreement was reduced to writing and settled; but, owing to oversight or neglect, it was never executed. The evidence as to the figures and bookkeeping took many days, and included the consideration of elaborate statements and counter-statements of expert accountants. An exhaustive factum on each side had been delivered. The Chief Justice preferred the evidence and the accounting and the arguments of the plaintiff, and adopted his counsel's factum as the basis of a judgment. He felt some doubt only as to the valuation of the motors, but the plaintiff's automobile expert was of a higher class than those called by the defendants, and he valued the machines as a going concern, and not, as they did, as on a forced sale. As to some of the motors, he was the only one called who had any knowledge or experience. The plaintiff had proved his case on both branches, and all things had happened and all times elapsed to entitle him to performance of the contract. The plaintiff should have judgment as prayed, with costs. S. H. Bradford, K.C., and B. N. Davis, for the plaintiff. W. T. J. Lee, for the defendants the Provincial Motors Livery and Allen. J. F. Holliss and T. H. Wilson, for the defendants the executors of J. S. Saunders.