

BRITTON, J.

FEBRUARY 1ST, 1902.

TRIAL.

PATTERSON v. TURNER.

Company—Agreement to Subscribe for Stock—Delay in Carrying out Objects of Company—Repudiation of Agreement—Judgment in Undefended Action against Company by Subscriber—Effect of—
R. S. O. 1887 ch. 157, sec. 4—R. S. O. ch. 191, sec. 9.

Action by plaintiffs, suing on behalf of themselves and all other subscribers to an agreement to take stock in the Hotel Brant Co., to recover from defendant Turner \$600, the amount of the par value of twelve shares which he agreed to take.

A. B. Aylesworth, K.C., and G. H. Levy, Hamilton, for plaintiffs.

G. Lynch-Staunton, K.C., for defendant Turner.

S. F. Washington, K.C., for defendant company.

BRITTON, J.—On 28th January, 1899, Turner signed the stock book of the proposed company, containing an agreement to take the number of shares set opposite the names of subscribers, and a covenant by the subscribers with each other to pay the amounts, when called in by the directors of the company, and to abide by the by-laws, etc., and, further these words, "no subscription to be binding until \$40,000 has been subscribed hereon." The stock book also contained a prospectus stating the object of the company to be the acquiring of the Brant House property at Burlington, and the erection of a summer hotel, at once, so as to be ready for the summer season of 1899. The first subscription was made on 17th November, 1898. The defendant signed on 28th January, 1899, and others subscribed, in all, to the amount of \$28,700 up to 29th March, 1899. Nothing further was done until October, 1899, when the plaintiff became interested, and on the 24th of that month signed the agreement in the stock book, and others subsequently signed, until the amount subscribed became \$40,150. Letters patent issued on 24th November, 1899, fixing the capital stock at \$50,000. The hotel was completed about the 1st July, 1900. In an undefended action the defendant obtained a judgment against the company declaring that he never was a shareholder. There is an important difference in the wording of R. S. O. 1897 ch. 191, sec. 9, and the earlier Act, R. S. O. 1887 ch. 157, sec. 4, as to who become shareholders. If the agreement to subscribe, signed by defendant, was produced and accepted by the Governor-in council as an agreement "in its