

THE
ONTARIO WEEKLY REPORTER

VOL. 25

TORONTO, MARCH 19, 1914.

NO. 15

HON. SIR G. FALCONBRIDGE, C.J.K.B. FEBRUARY 10TH, 1914.

SMITH v. HAINES.

5 O. W. N. 866.

*Fraud and Misrepresentation — Purchase of Shares in Company—
Action to Set Aside—Necessity of Clear Proof of Fraud—Evi-
dence—Dismissal of Action—Costs.*

FALCONBRIDGE, C.J.K.B., *held*, that where fraud is alleged in a civil action the party alleging it must prove it clearly and distinctly, a slight preponderance of the evidence in his favour not being sufficient.

Mowatt v. Blake, 31 L. T. R. (O.S.) 387, referred to.

Action for a declaration that plaintiff was not a shareholder in defendant company; for the removal of his name from the list of shareholders; for repayment of \$3,000 by the defendant Haines; for payment by the defendant Haines and the defendant company of all moneys paid by the plaintiff as surety for the defendant company; for delivery up by the defendant Haines of the plaintiff's promissory note for cancellation and for damages; tried at Toronto.

I. F. Hellmuth, K.C., and W. J. Elliott, for plaintiff.

E. F. B. Johnston, K.C., for defendant Haines.

R. McKay, K.C., for defendant company.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—In an ordinary civil case, if the scale inclines one way or the other "but in the estimation of a hair," that way the verdict may go.

But when a man's life or liberty is at stake, a higher degree of proof and a correspondingly high degree of certainty in the conclusion is required.