

It will be referred to the Master at Ottawa to ascertain the next of kin and make distribution according to their respective rights—meanwhile the personalty should be paid into Court after the taxation of and less the costs of the parties appearing on this motion.

LABINE v. LABINE—LATCHFORD, J.—DEC. 24.

Partnership—Action to Establish Agreement and for Share of Profits—Mining Claim—Sale of—Evidence—Finding of Fact of Trial Judge—Counterclaim—Promissory Notes—Collateral Agreement as to Time of Payment.]—Action by Gilbert and Charles Labine, brothers, against James Labine, their cousin, to establish a partnership in regard to a mining claim in the Night-Hawk Lake District, in which the defendant had a share, which he sold for \$75,000—the plaintiffs each claiming \$25,000. The learned Judge finds that there was no general partnership at any time between the three parties. This was in effect admitted at the trial. The plaintiffs' right, then, to share in the \$75,000 depended upon their establishing the agreement which they set up, that the defendant was to buy interests near Night-Hawk lake for the three. The plaintiffs both swore to the agreement, and it was denied by the defendant. The learned Judge was satisfied, upon the evidence, that no such agreement was in fact made. Action dismissed with costs.—The defendant counterclaimed upon five promissory notes, three made by the plaintiff Gilbert, and two by the plaintiff Charles. One of the notes made by Gilbert was for \$1,000; it was agreed, when it was made, that it was not to be paid until Gilbert had made a "pull." The learned Judge said that, if effect could be given to this agreement, he would dismiss the counterclaim so far as it related to the claim upon the \$1,000 note; but the contract expressed upon the face of the note must as a matter of law be given effect to: *Abrey v. Crux* (1869), L.R. 5 C.P. 37. Judgment for the defendant against the plaintiff Gilbert Labine for \$1,200 with interest and costs, and against the plaintiff Charles Labine for \$200 with interest and costs. T. W. McGarry, K.C., and J. Lorn McDougall, for the plaintiffs. R. McKay, K.C., and A. G. Slaght, for the defendant.