

There was evidence of pedigree to be taken, but it may be that nothing further needs to be argued on that branch of the case.

DIVISIONAL COURT.

OCTOBER 27TH, 1911.

SOVEREIGN BANK OF CANADA v. CLARKSON.

*Contract—Pledge of Shares to Bank as Security for Indebtedness—Written Agreement—Exclusion of Extrinsic Evidence—Effect of Agreement—Extension of Time—Sale of Securities by Bank—Notice—Authority to Sell at Fixed Price—Sale at Lower Price—Liability to Account for Difference.*

An appeal by the defendant Clarkson from the judgment of FALCONBRIDGE, C.J.K.B., in favour of the plaintiffs in an action upon promissory notes.

The appeal was heard by BOYD, C., BRITTON and MIDDLETON, JJ.

G. Lynch-Staunton, K.C., and R. B. Henderson, for the defendant Clarkson.

J. Bicknell, K.C., for the plaintiffs.

R. F. Segsworth, for A. F. Maclaren, brought in as a third party.

The judgment of the Court was delivered by MIDDLETON, J.:—Much time was consumed in this case by the failure to regard the wholesome rule that where there is a written contract all preliminary negotiations leading up to it are merged in it, and, in the absence of fraud or a claim to rectify, it is to be presumed to contain the entire engagement of the parties and to govern their rights. To this general rule there are, no doubt, exceptions—it is not obligatory upon the contracting parties to put the whole agreement in writing; but, speaking generally, the written document will be found to contain the whole agreement. A perusal of the correspondence in this case satisfies me that this is so here; and the document of the 28th April, 1908, governs the rights of the parties as to the matters therein dealt with.

Clarkson and Maclaren owed the bank a large sum. The bank as security held certain stock, part of which was pledged by Clarkson and part by Maclaren.