

he, plaintiff, reached over for the other copy to interline them, and defendant said "it is no matter; this binds you to give it, and that binds me to take it;" and that defendant consented to have the italicized words inserted. That was done there at the same time, and it was signed after the interlineation. He said the word "option" was never mentioned, and there was no condition about the matter, nor any words uttered by defendant to the effect that if matters turned out as he calculated, he would take the stock. This latter statement defendant had sworn to.

E. S. Wigle, K.C., for the plaintiff.

H. Clay and W. A. Smith, for the defendant.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—The burthen is undoubtedly on the plaintiff to shew that the document which he propounds, differing as it does, from the document produced by defendant (both being in plaintiff's own handwriting), represents the true agreement.

Unless I found that one or other of the parties, from his demeanour or otherwise, was manifestly lying, it is plain that without the evidence of Peterson, plaintiff could not succeed. Now Peterson's evidence is partly corroborative of plaintiff's story, and equally corroborative of defendant's. Therefore, it goes for nothing. I do not overlook the argument based on the expression "without interest," as being inapplicable to the case of a mere option, but I do not think it is sufficient to turn the scale.

Therefore, on the application of the rule regarding the burthen of proof the plaintiff fails.

It may be that plaintiff's explanation is true, and if so, it is very unfortunate for him that he did not insist on having the interlineation made in both documents. He looked like a man of ordinary business capacity, and ought not to have allowed himself to be induced to neglect this reasonable precaution.

Entertaining, therefore, the doubt which I have expressed as to the correctness of this decision—(I do not mean the legal correctness as to which I have no doubt), in dismissing the action, I make no order as to costs.

Action dismissed without costs.