

HON. MR. JUSTICE BRITTON.

JUNE 21ST, 1912.

M'FARLANE v. COLLIER.

3 O. W. N. 1510.

Company — Contract — Oral Agreement — Superintendent of Company—Failure of Plaintiff to Satisfy Burden of Proof.

Action by plaintiff upon an alleged oral contract with the defendant, a large shareholder in a company, that plaintiff should be paid by defendant the sum of \$4,300 for remaining on as superintendent of the company for one year after its reorganization.

Defendant denied the making of any such agreement.

BRITTON, J., *held*, that plaintiff had not satisfied the onus upon him of establishing the fact of the making of the agreement beyond a reasonable doubt.

Action dismissed without costs.

Action brought to recover \$4,300, upon an alleged oral contract made between defendant and plaintiff, at the Oriental Hotel, in Peterboro, on or about 15th January, 1910, that plaintiff would remain as superintendent with The Wm. Hamilton Co., Ltd., until the end of the current year, and on the basis of a yearly hiring, and in consideration therefor, defendant would pay to plaintiff \$4,300. The whole question was one of fact. No person other than the parties to this action was present and heard what plaintiff said was the bargain.

Plaintiff gave this account of what occurred. After some conversation as to selling preferred stock of the Wm. Hamilton Co., Ltd., and as to the applications therefor, and as to the necessity of getting these applications in, defendant promised to pay plaintiff \$4,300, for agreeing that he, the plaintiff, would remain with the company for one year, from the first November, 1909. Plaintiff did not pretend to remember all the conversation. He did, however, so he said, remember this, that defendant stood to make a lot of money—but in order to make it it was necessary that all the stock applied for, should be sold, and that he the plaintiff should remain in his position with the company at least for the full year. The case was that the plaintiff promised to remain the year and defendant promised to pay plaintiff the \$4,300.

Defendant emphatically denied that there was any meeting or conversation in any room in the Oriental Hotel on or about 15th January, 1910—and he denied, positively, that there was ever at any time or in any place such an agreement as alleged by plaintiff.