

HON. MR. JUSTICE MIDDLETON.

APRIL, 22ND, 1914.

## STIMSON v. BAUGH AND PROCTOR.

6 O. W. N. 264.

*Bills, Notes and Cheques—Partnership Note—Given for Purchase of Mining Shares.*

Action to recover on promissory note signed in the name of E. L. Baugh & Co. by one Proctor. It was contended that there was no partnership between B. and P. and that P. had no authority to sign B.'s name to the note.

MIDDLETON, J., upon the evidence, found in favour of plaintiff. Judgment accordingly.

Action to recover \$28,750, price of certain stock, payable under an agreement of 7th December, 1911, represented by a promissory note bearing date 8th December, 1911, given pursuant to this agreement. The note, though signed in the name of E. L. Baugh & Co., was signed by Proctor, and it is contended that there was no partnership between Baugh and Proctor, and that Proctor had not in fact authority to sign the note. Tried at Toronto non-jury sittings.

J. B. Clarke, K.C., for plaintiff.

J. M. Clark, K.C., for defendant Baugh.

Charles Kappele, for defendant Proctor.

HON. MR. JUSTICE MIDDLETON:—The defence filed on behalf of Baugh set out that he was the sole member of the firm of E. L. Baugh & Co. and that Proctor was authorized by him to obtain an option upon the stock in question upon such terms that there should be no liability beyond the \$5,000 paid at the time of the giving of the option, that it was understood that the agreement which was executed was in truth an option, and if it was not then there was no consideration for the payment of the \$5,000; and Baugh counterclaims for this sum. Proctor denies the agreement and denies all liability thereunder or upon the note which he signed.

By an amendment to his defence made before the trial Proctor sets out that he was acting as sales agent for the stock in the company in question, being employed by Stimson, Baugh, and one McCaffery, and that he entered into this employment upon certain representations as to the value of the property, and that the agreement of the 7th