

HOWE v. IRISH—KELLY, J.—JULY 20.

Contract—Advances to Owner of Mining Claims—Agreement to Allot Shares in Mining Property when Company Incorporated—Failure to Incorporate—Interest in Property—Declaration of—Parties—Reference—Account.—Action for specific performance of an agreement, and for a declaration of the plaintiffs' rights in certain mining claims standing in the name of the defendant, and for an accounting and other relief. The plaintiffs and others, on whose behalf they sued, advanced moneys to the defendant to assist him in developing the claims, upon his agreement to allot them shares in a mining company to be incorporated, but which has not been incorporated. The action was tried without a jury at Sandwich. KELLY, J., read a judgment in which he stated the facts, and said that the action was properly brought on behalf of the plaintiffs and those who signed the written authorisation of the action; and these persons were entitled to transfers from the defendant of undivided interests, to the extent in the aggregate of one-half, proportionate to their aggregate contributions. Other contributors may also come in and take the benefit of the transfer. Reference to the Local Master to take the accounts. Costs of the action down to the reference to be paid by the defendant; further directions and subsequent costs reserved until after the Master's report. The plaintiffs are to have, as security to the persons on whose behalf the action is brought, a lien upon the mining claims. O. E. Fleming, K.C., for the plaintiffs. F. D. Davis, for the defendant.

STACEY v. SMITH—BRITTON, J.—JULY 21.

Fraud and Misrepresentation—Exchange of Properties—Evidence—Finding of Fact of Trial Judge—Failure to Prove Fraud.—Action to recover possession of a farm in the township of Darlington. The plaintiff claimed as mortgagee upon default in payment of a mortgage made by the defendants. The defence was that the mortgage was obtained by the fraud of the plaintiff; and the defendants counterclaimed for rescission of the contract of exchange and the conveyances following upon it, one of them being the mortgage upon which the plaintiff claimed. The contract was for the exchange of the plaintiff's farm for property of the defendants situate in the city of Toronto. In order to adjust the values, the defendants made the mortgage, for \$2,100. The defendants' allegation was that the plaintiff, by false and fraudulent representations, induced them to believe that the farm was worth \$7,700, whereas in fact it would not sell for more than \$2,000. The action was tried without a jury at Cobourg. After reviewing