

the plaintiff, gave the plaintiff a one-half interest in the net profits of all undertakings of the defendant from the date of the agreement "and all properties hereafter acquired during the continuance of this agreement, in the Montreal River district . . . which said agreement shall continue in full force and effect until such time as the same may be determined" by the defendant giving to the plaintiff "at least three months' notice in writing of his intention to determine same."

The action was brought to enforce this agreement and for an account, etc.

The defendant alleged that the real agreement between the parties was limited to certain "Noel Plante" claims, and asked for rectification of the written instrument.

Negotiations for the "Noel Plante" claims fell through, and the defendant acquired what was called the "Silver Lake" claim, and voluntarily offered (he said) to allow the plaintiff to "come in" in respect of that claim.

On the 1st February, 1909, the plaintiff, in writing, "for value received," assigned, transferred, and set over unto the defendant "all interest in any mining locations held by" the defendant "to which I may be entitled by virtue of agreement heretofore entered into by me with him, and hereby release" the defendant "of and from all claims under the said agreement."

The defendant set up this release.

M. J. Gorman, K.C., for the plaintiff.

T. W. McGarry, K.C., for the defendant.

BRITTON, J., held, on the evidence, that there was no ground for any rectification. He further found that the defendant (on the 1st February, 1909), wearing a beaver coat of considerable value, was addressed by the plaintiff and told that he (plaintiff) would give the defendant his interest in the "Silver Lake" claim for the coat; that the defendant said he would do even better than that; that he would give the plaintiff the coat and \$50; that the plaintiff accepted, and the agreement of the 1st February, 1909, was thereupon drawn up and signed. The learned Judge further found that, when this agreement was executed, the defendant had not informed the plaintiff, and the plaintiff did not know, of any mining claims or prospects or interests which the defendant had acquired since the agreement of the 3rd January, 1908; that the withholding of information as to other claims was intentional and wilful on the part of the defendant; that the defendant knew on the 1st February, 1909, that the plaintiff, upon offering to release the defendant, in consideration of the coat, and then of the coat