

inion that the Judge had power, instead of either directing a nonsuit or a dismissal of the action, to order a new trial. He has power to grant a new trial on the ordinary application for such and upon hearing the parties. Where the facts are known to him, and where the jury is thought to have given a perverse verdict, so as to entitle the parties or either of them to a new trial, it seems to me not improper on the part of the Judge and quite within his power to make an order at once, instead of directing either a nonsuit or a dismissal of the action.

Motion dismissed without costs.

STUART V. BANK OF HAMILTON—MIDDLETON, J.—JAN. 26.

Contract—Company—Sale of Assets—Debenture Mortgage—Claim against Trustees—Securities Held by Bank—Subrogation—Evidence.—Action for a declaration that an alleged contract for the purchase of the assets of the Asheroft Water Electric and Improvement Company (a British Columbia company) had been rescinded, and for repayment of the sum of \$22,861.25 by the defendants the Bank of Hamilton, Turnbull, and Wilson, and for damages against the defendants Turnbull and Wilson for breach of the contract of sale. The action was tried without a jury at Toronto. MIDDLETON, J., said that he had come to the conclusion, upon the entire evidence, that the defendant bank took the position that it was ready to assist in the sale of the property, so that it might receive as the result of the realisation the amount of its claim, but that the bank in no sense became the vendor of the property. The defendants Wilson and Turnbull, who were trustees, were ready to acquiesce in anything which was desired by the bank, but they took no independent part in what followed. The plaintiff was well aware of the situation, and relied entirely for his protection upon the advice and assistance of a Mr. Gray, who went to British Columbia and investigated the affairs of the company, etc. The real difficulty between the parties, so far as the bank was concerned, was, whether the plaintiff ultimately paid the money which he afterwards paid to the bank, as a payment of the indebtedness of the company which entitled him to receive from the bank the securities held by the bank, so that he became subrogated to the bank's right against the company, or whether the bank undertook to exercise, by itself or through its officers, who were trustees under the debenture mortgage, the power of sale so as to vest the assets in the