

be useful to note, to the effect that where a claim and counter claim are dismissed at a trial and the defendant appeals from the judgment on the counter claim, it is not open for the plaintiff, by a notice served under Rule 870 (Ont. Rule 813), to appeal from the judgment on the claim, but in order to do so he must bring a cross appeal. But in the present case the judge had so linked the action and counter claim together, with the acquiescence of counsel, that a cross notice was, in this case, treated as a cross appeal.

VENDOR AND PURCHASER—REPUDIATION BY PURCHASER AFTER PART PAYMENT—SPECIFIC PERFORMANCE—LACHES.

Cornwall v. Henson (1900) 2 Ch. 298, is another case in which the judgment of Cozens-Hardy, J., (1899) 2 Ch. 710 (noted ante p. 89) has failed to be upheld by the Court of Appeal. As the facts are pretty fully stated in our previous note of the case, it is only necessary here to say that in the judgment of the Court of Appeal (Webster, M.R., and Rigby and Collins, L.JJ.) the conduct of the plaintiff did not amount to an abandonment of the contract, and the vendor was not justified in treating the contract as abandoned; but, at the same time, the Court held that the plaintiff's laches disentitled him to specific performance, but the Court of Appeal considered him entitled to recover damages which were assessed at £125. The report is silent as to the question of costs.

COMPANY—DIRECTORS—IMPROPER ALLOTMENT OF SHARES TO DIRECTORS AT UNDER VALUE—DAMAGES, MEASURE OF—PRACTICE—APPEAL—STAY OF REFERENCE PENDING APPEAL.

Shaw v. Holland (1900) 2 Ch. 305, was a case of a shareholder against directors, to make them account to the company of which they were directors, for damages for allotting shares to themselves at an under value, and the question was as to the proper measure of damages. North, J., had held that the damages should be ascertained as to shares sold, on the footing of the difference between the market price the shares realized and that at which they were allotted, and as to shares retained the difference between the market price on the day when the trial ended before him and the price at which they were allotted. The Court of Appeal (Webster, M.R., and Rigby and Collins, L.JJ.) agreed with North, J., as to the measure of damages as to the shares sold, but