

GARRETT V. FISCHER—FALCONBRIDGE, C.J.K.B.—JAN. 14.

Promissory Notes—Purchase-price of Company-shares—Rebate—Credit on Notes—Counterclaim—Recovery of Balance Due on Notes—Damages.]—Action to recover \$4,009.49 rebate on the purchase-price of the stock of an industrial company, with a guaranty by the defendants of the producing capacity of the plant; or, in the alternative, for payment of that sum as damages for alleged fraudulent misrepresentations; for the return of 15 promissory notes, aggregating \$11,000, given by the plaintiff in payment of the balance of the purchase-price of the stock; and for the transfer by the defendants to the plaintiff of 140 shares of the stock. The learned Chief Justice finds that the test of the company's plant was honestly made; that the plant is not capable of producing more than the minimum amount (15,000 per day) on the average; and that in order that good bricks shall be produced, they must be steamed for 48 hours. Some of the items in paragraph 14 of the statement of claim seem to be properly recoverable by the company, and as to these the plaintiff undertakes to get a discharge from the company or otherwise indemnify the defendants. The plaintiff is entitled to be credited on the notes with the sum of \$4,009.49, with costs of suit. As to the counterclaim, the defendant is entitled to the balance due on the notes after crediting the above sum of \$4,009.49. If the plaintiff fails, within 30 days, to supply a mortgage for the amount over \$7,000 at 6 per cent., or otherwise to satisfy the defendants in respect of the matters complained of in paragraph 1 of the counterclaim, there will be a reference to the Master at Berlin to ascertain the damages due to the defendants in respect thereof. The defendants will have costs of the counterclaim. G. Lynch-Staunton, K.C., and E. W. Mackenzie, for the plaintiff; R. McKay, K.C., and J. C. Haight, for the defendants.

CORRECTION.

IN TORONTO BRICK CO. v. BRANDON, ante 648, 4th line from bottom, for "bring" read "buy."