

been made *ex parte*. Upon the motion it was conceded that unless the writ was a nullity, nothing would be gained by setting aside the order to amend. The Master said that *Drury v. Davenport* (1837), 6 Dowl. 162, would not be followed at the present day; and he was bound by his own decision in *Biggar v. Kemp* (1908), 12 O.W.R. 863, to hold that the amendment was properly made, and the writ not a nullity. The concluding words of Con. Rule 1224 shewed that this motion could not succeed unless the variance from the fact was "matter of substance." These mistakes are not to be condoned always and as a matter of course, but it would be a sufficient penalty if the plaintiffs were left to bear their own costs. Motion refused without costs. S. H. Bradford, K.C., for the defendant. M. L. Gordon, for the plaintiffs.

AIKINS v. MCGUIRE—FALCONBRIDGE, C.J.K.B.—JAN. 29.

*Vendor and Purchaser—Contract for Sale of Land—Revocation—Onus—Failure to Satisfy—Specific Performance.*—Action by vendor for specific performance of a contract for the sale and purchase of land. The defendant's solicitor asserted and John Percy (one of the plaintiff's cestuis que trust) denied that he (Percy) offered to "call the deal off," and that the solicitor assented to that proposition. Each one had a different recollection of a heated conversation. The learned Chief Justice said that the onus was distinctly on the defendant to prove the revocation of the contract; and it must be held to be not proven in fact. The plaintiff was trustee for and co-owner with John Percy and two others; and, even if the Chief Justice had come to a different conclusion on the above question of fact, the defendant might have to encounter serious questions of law. Poucher (another co-owner and cestui que trust) swore (and so did John Percy) that he (Poucher) never consented to revoke nor gave John Percy authority to do so. Judgment for the plaintiff for specific performance, in the usual form, with a reference to the Master as to title, etc., with costs. W. M. Douglas, K.C., for the plaintiff. W. N. Ferguson, K.C., for the defendant.