

N.S.]

MILLARD T. DARROW.

[March 22.]

Contract for sale—Action for price—Counterclaim—Specific performance—Costs.

In an action for the price of land under an agreement for sale, or in the alternative for possession, defendant filed a counterclaim for specific performance and paid into Court the amount of the purchase money and interest demanding therewith a deed with covenants of warranty of title. Plaintiff proceeded with his action and recovered judgment at the trial for the amount claimed and costs including costs on the counterclaim, the decree directing him to give the deed demanded by the defendant as soon as the costs were paid. The verdict was affirmed by the Court en banc.

Held, that as the defendant had succeeded on his counterclaim he should not have been ordered to pay the costs before receiving his deed, and the decree was varied by a direction that he was entitled to his deed at once with costs of appeal to the Court below en banc and to the Supreme Court of Canada against plaintiff. Parties to pay their own costs in court of first instance.

Per GWYNNE, J. Defendant should have all costs subsequent to the payment into court. Appeal allowed with costs.

Russell, K.C., and *Wade*, K.C., for appellant. *Jas. A. McLean*, K.C., for respondent.

Province of Ontario.

COURT OF APPEAL.

From Rose, J.]

ROSS vs THE QUEEN.

[April 1.]

Succession Duty Act.

An appeal by the Crown from the judgment of ROSE, J., reported 32 O.R. 143; 36 C.L.J. 456, was argued before ARMOUR, C.J.O., OSLER, MACLENNAN, MOSS, and LISTER, J.J.A., and at the conclusion of the argument was dismissed with costs, the Court agreeing with the reasoning of the judgment appealed from.

J. R. Cartwright, K.C., and *Frank Ford*, for appellant. *J. H. Macdonald*, K.C., and *H. L. Ebbels*, for respondents.