

Plant v. Bourne, [1897] 2 Ch. 281; Ogilvie v. Foljambe (1817), 3 Mer. 53; Shardlow v. Cotterell (1881), 20 Ch. D. 90; Bleakley v. Smith (1840), 11 Sim. 150; Sugden on Vendor and Purchaser, 14th ed., p. 134; Fry on Specific Performance, 5th ed., pp. 166, 169.

The appeal should be dismissed with costs.

FALCONBRIDGE, C.J.K.B., agreed in the result arrived at by RIDDELL, J.

The Court being equally divided, the appeal should be dismissed without costs.

*Appeal dismissed without costs.*

SECOND DIVISIONAL COURT.

JANUARY 19TH, 1916.

O'HEARN v. FRIEDMAN.

*Vendor and Purchaser—Agreement for Sale of Land—Default in Payment of Purchase-money—Forfeiture of Moneys Paid—Appeal—Consent Judgment—Terms—Costs.*

Appeal by the defendants Friedman and White from the judgment of CLUTE, J., ante 218.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

J. E. Cook, for the appellants.

A. C. McMaster, for the plaintiff, respondent.

THE COURT made the following order: By consent, the action is to be dismissed, without costs, if, within two calendar months, the defendants pay to the plaintiff the balance of the purchase-money, with interest, and the costs of the action, upon receiving a sufficient conveyance, with good title, to the property in question. And, by consent also, in case the parties are unable to agree as to the amount of the balance of the purchase-money and interest, or as to the conveyance or title, then it is to be referred to the proper local officer to hear and determine any and all such matters, and the agreement in question is to be carried out according to the ruling of such officer—subject to the ordinary right of appeal—within the said two months. And, by consent also, in case the defendants shall fail to pay the balance of the purchase-money and interest or the costs of the action, including any costs of such reference, if any, as the Referee shall direct payment of, then this appeal is to be dismissed with costs.