

but that was out of the question, having regard to the manner in which the man was tried and convicted; and, that being so, it was not needful to consider whether the magistrate ever had any jurisdiction over the prisoner.

The appeal should, therefore, be allowed and an order made as above mentioned.

The other members of the Court agreed in this disposition of the case—MAGEE, J.A., and RIDDELL, J., giving reasons in writing.

Appeal allowed.

SECOND DIVISIONAL COURT.

JUNE 13TH, 1919.

*BROWN v. WALSH.

Contract—Sale of Goods—Action by Buyer for Damages for Breach by Seller—Failure on Facts—Claim for Return of Money Paid by Buyer on Account of Price—"Deposit"—Forfeiture—Absence of Agreement for Retention of Money Paid—Return of Amount Paid, less Damages Sustained by Buyer's Breach of Contract.

Appeal by the plaintiff from the judgment of the Judge of the County Court of the County of Huron dismissing an action to recover \$135 damages for breach of a contract and \$100 for money had and received.

The appeal was heard by MEREDITH, C.J.C.P., MAGEE, J.A., BRITTON, J., and FERGUSON, J.A.

R. C. H. Cassels, for the appellant.

L. E. Dancey, for the defendant, respondent.

MEREDITH, C.J.C.P., reading the judgment of the Court, said that the defendant agreed with the plaintiff to sell to him "one car cast iron and stove plate mixed and all wrought iron and steel and malleable, price \$22 per ton for cast and stove plate, \$17 for wrought and steel and malleable, f.o.b. Blyth." Two writings evidencing the agreement were made, one signed by the plaintiff and the other by the defendant, and in each it was said that there had been "deposited on this contract that is to say \$60 on the balance of iron left in yard f.o.b. when loaded on car," and that "before loading this iron" the defendant "will pay \$40 on contract." The iron was to be "loaded in January," but after-