

KEMERER V. WILLS AND SINGLEHURST—FALCONBRIDGE, C.J.K.B.
—OCT. 6.

Broker—Contract—Partnership—Counterclaim.]—Action by a broker for \$12,187.50 and for a declaration of the plaintiff's rights against the two defendants, also brokers, under an alleged agreement. The defendant Singlehurst denied the agreement, and counterclaimed for one-third of the plaintiff's demand and for \$950. The learned Chief Justice said that the defendant Singlehurst had proved paragraph 5 of his statement of defence and counterclaim. The question of the existence of a partnership between the plaintiff and the defendant Wills had arisen and had been to some extent considered by other judicial officers, but never with all the convincing pieces of evidence which were presented at the trial of this action. The action failed against the defendant Singlehurst, and he was entitled to judgment on his counterclaim, with its necessary result upon the temporary credit allowed on the reference. The Chief Justice does not pass upon the alleged agreement set up in the statement of claim, because it has become unnecessary to do so. If he had to do so, he would probably hold that (treating all parties as fairly on the same plane as regards demeanour and general credibility), in view of all the discordant elements of the case, the plaintiff had failed to discharge the onus of proof. Judgment dismissing the action as against Singlehurst with costs, and giving him judgment on his counterclaim with costs. The defendant Wills joined hands with the plaintiff, who, therefore, might, if he wished, have judgment against Wills without costs. M. H. Ludwig, for the plaintiff. W. R. Smyth, K.C., for the defendant Wills. Glyn Osler and S. G. Crowell, for the defendant Singlehurst.