The appeal should be allowed; and, as the defendants evidently had in hand the means to pay, having at one time sent a cheque for the full amount to the plaintiffs, there was no reason why judgment should not go for the full amount—less the money paid into Court, which should be paid out to the plaintiffs—if not paid within one month. The plaintiffs should have their costs throughout against the defendants.

RIDDELL, J., also read a judgment. He was of opinion that the defendants were wrong, and the plaintiffs were entitled to succeed. He differed from the Chief Justice as to the remedy, saying that the evidence shewed that the defendants did not collect the full amount required $2,650, but only $1,500. Sending a cheque for $2,650 was an inadvertence. The defendants should be ordered to raise the amount and pay it over. But a prerogative writ of mandamus should not, without the consent of the defendants, be ordered to issue by the judgment in an action. If the defendants do not consent, there should be a judgment declaring that the plaintiffs are entitled to the writ, with costs of the action and appeal. If they consent, the appeal should be allowed with costs here and below, and a writ of mandamus should issue, the plaintiffs being allowed to amend their statement of claim accordingly.

ROSE, J., agreed with RIDDELL, J.

LENNOX, J., was of opinion that the appeal should be dismissed. He was not satisfied that the steps contemplated by the statute were taken, or that the judgment in appeal was wrong.

Appeal allowed; LENNOX, J., *dissenting.*

SECOND DIVISIONAL COURT.   DECEMBER 21ST, 1917.

*SPARKS v. CLEMENT.

Vendor and Purchaser—Agreement for Sale of Land—Memorandum Signed by Purchaser but not by Vendor—Action by Vendor for Specific Performance—Description of Land—Sufficiency for Identification—Statute of Frauds—Defence that Transaction not Real—Inadmissibility—Pretended Sale—Evidence—Probabilities —Immorality of Defence—Rules of Civil Law.

Appeal by the plaintiff from the judgment of CLUTE, J., ante 122.