

plaintiff to induce the purchase which the defendants made. The defence and counterclaim based on this ground failed.

The plaintiff set up that there was a total failure of consideration for the release, and that it was, therefore, inoperative. But the release, being under seal, did not require a consideration to support it (Leake on Contracts, 5th ed., p. 654), and the plaintiff could not repudiate it.

Judgment declaring the plaintiff entitled to recover from the defendants the amount claimed, with interest, less \$382.22, with a declaration that the charge attaches to five-sixths of the defendants' interest in the mining locations. The plaintiff's costs should be paid by the defendants.

FALCONBRIDGE, C.J.K.B., IN CHAMBERS. DECEMBER 21ST, 1916.

YOUNG v. SPOFFORD.

Appeal—Motion for Leave to Appeal from Order of Judge in Chambers as to Costs—Motion Made to Another Judge—Judicature Act, R.S.O. 1914 ch. 56, secs. 24, 74.

Motion by the execution creditor for leave to appeal from the order of MIDDLETON, J., ante 232.

R. L. McKinnon, for the applicant.

L. W. Goetz, for the execution debtor and the claimant in interpleader.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the jurisdiction which Mr. McKinnon invoked here, and which was acted on in *Re Sturmer and Town of Beaverton* (1911-12), 25 O.L.R. 190, 566, to award costs against a person not a party to the proceedings, was found in sec. 74 of the Ontario Judicature Act, which gives to the Court a discretion over costs and power to determine by whom costs shall be paid. By sec. 24 (amended since *Gates v. Seagram* (1909), 19 O.L.R. 216, was decided), no appeal shall lie as to costs which by law are left to the discretion of the Court upon any ground except by leave of the Judge making the order.

Motion dismissed. This objection not having been taken in argument, no costs.