

the letter to be written and delivered purposely to do plaintiff damage and cause him loss; and that defendants had agreed to deliver to plaintiff certain goods upon the farm (describing them) but had refused to do so. Plaintiff claimed \$6,000 damages for the wrongs complained of, and \$500 damages for the detention of the chattels.

The action was tried without a jury at Brampton and Toronto.

W. S. Morphy, Brampton, for plaintiff.

w. J. Hanna, Sarnia, for defendants Thomas P. Bradley and Isabella Bradley.

E. G. Graham, Brampton, for defendant Campbell.

BOYD, C.:—There appears to be no actionable wrong in the matter of the complaint preferred by plaintiff. His duty was plain under the terms of settlement, by which former litigation was ended. He was given the privilege of purchasing the homestead for the cash price of \$12,000, less his share of the estate, fixed at \$1,200, and was to carry out the purchase within two weeks from the date. Therein he failed; he had not the money in hand, and he failed to raise it, so that default in payment happened, and his right to get the property ended.

The only excuse for this failure to observe the strict letter of the offer was that he proposed to make a sale of property, which was frustrated by a letter from the solicitor defendant to the auctioneer. Upon the receipt of the letter the auctioneer declined to go on, and this failure to hold the auction was made the occasion of the withdrawal of one Luxton, who proposed to buy at plaintiff's right to the property for \$13,500. This proposed sale appears to me a matter altogether collateral to the transaction between plaintiff and the estate. What scheme he might try in order to raise the money is foreign to the purpose, so long as he failed to make the payment in time. He was not prevented from paying the money on the day, and he could then, had he wished, subsequently have proceeded with the sale to make profit out of his bargain. But till he paid his money there was no contract between the parties, and nothing out of which a right to damages would arise from the breach of it: *Ranelagh v. Miller*, 2 Dr. & Sm. 278; *Dawson v. Dawson*,