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[MARCH 3RD, 1902.

DIVISIONAL COURT.

PRITTIE v. LAUGHTON.

*Specific Performance—Alteration of Written Offer—Onus of Proof—
Alternative Remedy in Damages—Effect of not Pleading—Division
Court—Solicitor's Duty and Risk in Choosing Forum.*

Croockewit v. Fletcher, 1 H. & N. 893, per Martin, B., approved.

Adderley v. Dixon, 1 S. & S. at p. 610, and Scanlan v. McDonough, 10 C. P. 104, referred to.

Appeal by plaintiffs from judgment of MEREDITH, C.J., dismissing action to compel specific performance of an agreement to sell certain land. The agreement or option gave plaintiffs a certain number of days within which to purchase. The trial Judge held that the plaintiffs had failed to make out a contract; that the document originally contained the word "thirty" where the word "ninty" in the document, as produced, was written, as the number of days within which the purchase was to be completed; that, in view of that, and looking at the extraordinary character of the instrument—all scratched—it could not be found, in the conflict of evidence, that the option was originally for ninety days; that defendant Peter Laughton did not know that the acceptance was written as declared by plaintiffs, and that, if it was so written, Laughton did not know it was there; and that, there having been a material alteration of the option, the plaintiffs could not succeed.

G. F. Shepley, K.C., for plaintiffs.

C. C. Going, Toronto Junction, for defendant.

The judgment of the Court (FERGUSON, J., MEREDITH, J.) was delivered by

MEREDITH, J.—If the right determination of this case depended entirely upon the single question, was the