An appeal by the defendants, the Ontario Lumber Co., from a judgment of HON. MR. JUSTICE BRITTON, 21 O. W. R. 660; 3 O. W. N. 811.

The appeal to Court of Appeal was heard by HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE LENNOX.

J. Bicknell, K.C., for the appellants.

Leighton McCarthy, K.C., for the plaintiffs.

HON. MR. JUSTICE MEREDITH:—The appellants have failed to convince me that the appeal should be allowed.

The writing in question was an " offer to purchase," and the acceptance in writing at the foot of it is of " the above offer;" the most material term of the offer is that the cash payment of $5,000, to be made when the agreement was effected, was " to be returned without interest if contract not completed."

Ordinarily these words should not give an absolute right on the purchaser's part to rescind; if that right had been intended to be reserved, there would have been no difficulty to find words well fitted to give expression to it. On the other hand the whole of the testimony shews that this term was inserted at the purchaser's instance, and for his benefit; and it is hard to see how it would be beneficial to the purchaser, except in the way of a right to rescind.

The words are ambiguous; the case is not one in which to give the relief sought, would be to disregard words of but one meaning; and putting one's self as nearly as one can in the position of the parties at the time of the making of the agreement, I am not prepared to say that the interpretation of the words in question by the learned trial Judge is wrong.

It is not an uncommon thing for a vendor to provide that he may in certain events—but not at will—rescind on returning the deposit of purchase money; but it is at least quite unusual for a purchaser to provide for rescission at his will. If it be held a right to rescind vested in the vendor alone, and at will, it would be unusual, and rather hard upon the purchaser; whilst if it give each such a right it would be substantially no agreement. It may, of course, be