

VOSKOBONIK V. DYKE—FALCONBRIDGE, C.J.K.B.—OCT. 20.

Contract—Sale of Goods—Breach of Contract—Evidence—Finding of Fact of Trial Judge—Money in Court—Payment out—Costs.]—Action to recover damages for an alleged breach of contract and for the return of \$620 paid by the plaintiff to the defendant on account of furs purchased from the defendant. The action was tried without a jury at Sault Ste. Marie. FALCONBRIDGE, C.J.K.B., in a written judgment, said that both on the preponderance of evidence and on the demeanour of witnesses he found all the facts in controversy in favour of the defendant. It was very considerate and more than fair on the part of the defendant's son to accede to the request of the plaintiff (who was already in default) to give him half an hour to procure the money. On the plaintiff's statement he did not tender it until 40 minutes had elapsed. According to Maurice Dyke and Douglas, more than an hour had gone by before the sale to the latter took place. The action should be dismissed with costs. There should be an order for payment out of Court to the defendant of his taxed costs and to the plaintiff of the balance. J. L. O'Flynn, for the plaintiff. W. G. Atkin, for the defendant.

PROZELLER V. WILTON—LENNOX, J.—OCT. 20.

Sale of Goods—Accounting for Goods Received—Conversion—Damages—Counterclaim—Costs—Indemnity.]—Action to recover from the defendant Wilton \$2,282.22 and interest and for an accounting in respect of seven car-loads of potatoes and in the alternative for damages, and to recover from the defendant the Union Bank of Canada \$3,000 for alleged wrongful conversion and breach of trust. The defendants asserted counterclaims against the plaintiff. The action and counterclaims were tried without a jury at a Toronto sittings. LENNOX, J., in a written judgment, after a thorough examination of the evidence, made findings of fact upon which he based a judgment for the plaintiff against both defendants for \$1,729.08, with interest from the 26th April, 1917, and dismissing the counterclaims of the defendants, except as to certain items which were deducted from the plaintiff's claim in arriving at the sum of \$1,729.08, with costs of the action and counterclaims to the plaintiff, less the sum of \$50 allowed as costs in respect of the items of the counterclaims upon which the defendants succeeded. Should the defendant bank desire to have judgment against the defendant Wilton for indemnity, the Judge will consider an application therefor, if made before the entry of judgment. J. W. Bain, K.C., and M. L. Gordon, for the plaintiff. A. C. McMaster, for the defendant Wilton. D. C. Ross, for the defendant bank.