

or for such disposition of the money as to the Court may seem meet. . . .

Usual costs of an application to pay in to be deducted from proper amount payable on the certificate, and balance to be paid into Court.

NOVEMBER 23RD, 1904.

DIVISIONAL COURT.

WALKER v. BOWER.

*Money Paid—Advance to Protect Stocks—Express or Implied Contract to Repay—Ratification.*

Appeal by plaintiff from judgment of MORGAN, Jun. Co.J., dismissing action in County Court of York brought to recover \$220 alleged to have been paid by plaintiff to one Smith for the use and benefit of defendant.

The appeal was heard by MEREDITH, C.J., MACMAHON, J., IDINGTON, J.

W. N. Ferguson, for appellant.

R. C. Clute, K.C., for defendant.

IDINGTON, J.—Plaintiff and defendant had been friends, but had become so much estranged that, at the time when plaintiff gave his cheque for \$220 to one J. C. Smith, a broker, to prevent a re-sale of stock then being carried by the broker for defendant, they were not on speaking terms.

A good deal of doubt . . . has been raised by defendant as to the intention of plaintiff in making the advance, and indeed as to the good faith of both plaintiff and Smith in regard to their dealing in the matter.

I think all that must be set aside when it is found as a fact, as in effect it is, by the trial Judge, and not disputed, that at the time plaintiff gave his \$220 cheque to Smith the stocks in question had fallen that much, and were worth and could have been bought in the open market for just that much less than they cost plaintiff by beginning the deal, as he swears, to save an old friend.

I find no other motive than the one assigned by plaintiff for his conduct. I think it was both credible and creditable.

Defendant clearly recognized Smith's right to advance for defendant's benefit, to carry his stock, the amount in question, and look to him for repayment. He treats himself, as clearly as can be, as indebted to Smith on 1st April. He admits in his evidence that when Smith told him of Walker's payment, he said he would see Walker—not a word breathed