

It appeared from the evidence that when the stock was taken its value was found to be \$7,051, and it was upon this excess of \$51 that plaintiff claimed to be entitled to declare the "deal off."

F. E. Hodgins, K.C., and D. S. Storey, Midland, for plaintiff.

W. A. Boys, Barrie, and R. H. Holmes, Wingham, for defendant.

MEREDITH, C.J.—I held at the trial that plaintiff had elected not to avail himself of the right which the agreement gave him to declare the "deal off" if the value of the stock should be found to exceed \$7,000, and reserved judgment as to the effect of this finding upon plaintiff's right to recover.

It appeared further in evidence that after plaintiff had written to defendant declaring the "deal off" and demanding the return of the \$1,000, defendant, after some correspondence with plaintiff, in which he took the position that plaintiff was bound to complete the purchase and insisted upon his doing so, gave notice to plaintiff of his intention to sell the goods, and that he would hold him responsible for all loss and damage which defendant might sustain "under the sale, together with all charges for storage."

Plaintiff having paid no attention to this notice, defendant, on the day fixed for the sale to take place, put up the goods for sale by public auction, but was unable to sell, because there were no bids, and he formally bid in the goods himself, not intending, as I find, to buy them, but because he believed that to be a formality necessary to be gone through. After this attempted sale, defendant proceeded to sell the goods by retail "over the counter," with the result that the net proceeds will fall considerably short of satisfying what remains due of the purchase money.

The mode of selling which defendant adopted was, as I find, a reasonable and practically the only one open to him, and that which was calculated to realize the best price for the goods.

My findings are conclusive against plaintiff's right to recover in this action.

It was urged, however, on the part of plaintiff, that before he attempted to call the "deal off" defendant had repudiated the contract, and that the action was sustainable on that ground.