

EVANS v. WATSON—FALCONBRIDGE, C.J.K.B.—OCT. 28.

Contract—Sale of Cattle—Evidence—Onus—Recovery of Price—Payment out of Money Paid into Court.]—Action to recover \$1,779.68, said to be the balance due to the plaintiff for cattle sold to the defendant and for one week's feed of the cattle. The action was tried without a jury at Brampton. FALCONBRIDGE, C.J.K.B., in a written judgment, said that the bargain was undoubtedly made as the plaintiff stated. The market went down, the defendant rued his bargain, and was endeavouring to set up a new arrangement whereby the cattle should be sold in the stock-yards on behalf of the plaintiff. The onus was on the defendant; but, if it were not, the plaintiff's testimony was to be preferred, and all the surrounding circumstances were in his favour. There should be judgment for the plaintiff for \$1,779.68, less \$1,419.26 paid into Court by the defendant, that is, \$360.42, with interest from the 11th February, 1919, and costs, and an order for payment out of Court to the plaintiff of the amount paid in with accrued interest. E. G. Graham, for the plaintiff. W. S. Morphy, for the defendant.

FIFE v. KEATING—FALCONBRIDGE, C.J.K.B.—OCT. 29.

Vendor and Purchaser—Agreement for Sale of Land—Action for Purchase-money—Necessity for Tender of Deed—Statement of Inability to Pay—New Agreement Set up by Purchaser—Failure to Prove.]—Action to recover the purchase-price of 6 lots in Chamberlain Park which the defendant agreed to purchase from the plaintiff. The action was tried without a jury at Orangeville. FALCONBRIDGE, C.J.K.B., in a written judgment, said that the agreement set up in the 8th paragraph of the defendant's affidavit of merits was never entered into, and this was the finding of fact without reference to the burthen of proof. The learned Chief Justice gave the plaintiff's counsel leave to submit authorities on the question of the alleged necessity to tender a deed to the defendant; but it was unnecessary to wait, because it was clear that where (as in this case) the defendant by letter and orally stated his inability to pay, it would have been an idle formality to tender a conveyance. No such defence was suggested in the defendant's affidavit. It was a mere afterthought at the trial. There should be judgment for the plaintiff for \$1,850, with interest and costs. J. R. Layton, for the plaintiff. W. D. Henry, for the defendant.