

provisions of the statute; but, upon a claim for conversion, the defendant would still have a right to set off the money owing to him by the plaintiff.

The plaintiff should have nominal damages (\$4.96) in respect of the goods sold within the 20 days; but this should be deducted from the amount due for wages, which was \$30.96, leaving the defendant entitled to recover \$26 on his counterclaim without costs. The action should be dismissed without costs; and the defendant's counterclaim should also be dismissed except as to the wages.

LENNOX, J.

FEBRUARY 22ND, 1918.

THOMPSON v. GATCHELL.

*Vendor and Purchaser—Agreement for Sale of Land not in Ontario
—Action for Balance of Purchase-money—Specific Performance
—Jurisdiction of Supreme Court of Ontario—Ability to Shew
Good Title and to Convey—Reference.*

Action by the assignees of the vendor to recover the balance of the purchase-money said to be due under an agreement for the sale of land in Alberta.

The action was tried without a jury at Toronto.

A. C. McMaster, for the plaintiffs.

T. R. Ferguson, for the defendant.

LENNOX, J., in a written judgment, said that one Smyth agreed to convey 18 town lots in Albert Park, Alberta, to the defendant, in consideration of the payment by the defendant of \$6,613 in instalments, all of which had matured. The plaintiffs were assignees not only of the unpaid instalments but of the interest of the vendor in 9 of the lots which had not been conveyed. The defendant, under the terms of the agreement, was not to be entitled to a conveyance until he had paid in full; but, under a subsequent arrangement, when the defendant had paid about half of the purchase-money, the vendor conveyed to him one half of the land, that is, 9 of the 18 lots. This was before the assignment to the plaintiffs.

The plaintiffs sued for the balance of the purchase-money, and alleged that they were ready and willing to make a good title and to convey the 9 lots, upon payment.