

## SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

DECEMBER 4TH, 1913.

## BLAIS v. BIGOVAISE.

*Contract—Sale of Goods — Possession in Vendors till Payment—  
Rescission of Contract — Consent to — Recovery of Purchase  
Price—Appeal—Variation in Judgment—Costs.*

SUP. CT. ONT. (2nd App. Div.) varied a judgment of the County Court of the County of Carleton in favour of plaintiffs for \$229.20, moneys paid for goods of which possession was resumed by defendants, holding that plaintiffs were entitled to possession and defendants to the balance of the unpaid purchase money as the contract had not been rescinded.

Appeal by the defendant from a judgment of HIS HON. JUDGE MAC TAVISH of Carleton County Court, pronounced 11th October, 1913.

This was an action to recover \$275 which plaintiffs alleged they paid as part payment of certain goods and chattels purchased from defendant, which goods and chattels defendant took back and refused to deliver to plaintiffs, and also refused to return the \$275 paid.

HIS HON. JUDGE MAC TAVISH, at trial entered judgment for plaintiff for \$229.20 without costs, and dismissed defendant's counterclaim for \$120.80, without costs.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH, on the 3rd December, 1913.

H. M. Mowat, K.C., for the defendant, appellant.

Augustè Lemieux, K.C., for the plaintiffs, respondents.

Their Lordships' judgment was delivered by

HON. SIR WM. MULOCK, C.J. Ex. (v.v.): — We are not able to see this case as Mr. Lemieux has put it.

The learned trial Judge has reached the foundation of the case when he has found that the plaintiffs are not to be entitled to the goods until they have paid the \$100.

That is his judgment, adopting the defendant's version of the transaction, viz., there was a binding bargain of sale;