

money back for the stock, the appellant would take the stock from her and pay her the face value of it; and the respondent and her husband, by way of counterclaim, repeat the allegations of their statement of defence, and claim against the appellant the \$3,500 on her undertaking and agreement to take the shares and pay for them.

By the judgment pronounced at the trial it was ordered and adjudged that the note for \$2,500 should be delivered over to the plaintiffs in the action to be cancelled, and that the signature of the appellant on the note for \$1,000 should be cancelled, but that it should "remain as far as the signature of R. E. Kinsman thereon is concerned," and that in all other respects the action should be dismissed; and it was further ordered and adjudged that the respondent should recover on her counterclaim against the appellant \$3,500; and it is from the judgment on the counterclaim that the appeal is brought.

There was a direct conflict of testimony as to the agreement alleged to have been made by the appellant which forms the subject-matter of the counterclaim; and, if the case turned upon the oral testimony only, and the learned Judge had reached his conclusion as to the credibility of the witnesses after seeing and hearing all the witnesses, his finding could not properly be disturbed.

I am, with great respect, of the opinion that the documentary evidence adduced at the trial, and that put in by leave on the hearing of the appeal, is quite inconsistent with the existence of an agreement by the appellant to take the shares off the respondent's hands at face value or on any other terms, and makes it clear, I think, that any agreement on the subject that was made, if any was made, was an agreement by the husband of the appellant and by him alone. . . .

[Summary of the oral evidence given on behalf of the respondent.]

The alleged agreement to take back and pay for the stock, as well as the conversations deposed to by the respondent, were categorically denied by the appellant and her husband.

Even if there were no correspondence to throw light upon the transaction, and nothing but the oral testimony to guide, I should have hesitated long before coming to the conclusion that the agreement which the respondent sets up was proved. The evidence on the part of the respondent is . . . met by directly contrary evidence on the part of the appellant; and, in my judgment, a very clear case should be made by the respondent