

tion and of cohabitation of the prisoner and his alleged wife; and no evidence was given of penetration or the emission of seed in the alleged act of sexual intercourse between the accused and the girl said to be his daughter, the evidence being that of a witness who swore that she saw the accused having sexual intercourse with the girl.

The learned Chief Justice reserved for the consideration of a Divisional Court of the Appellate Division the following questions:—

(1) Did the comment made by the Crown counsel render the trial and conviction void?

(2) Was formal proof of the marriage of the prisoner with the mother of the girl necessary to sustain the conviction?

(3) Was the evidence relating to the alleged sexual intercourse, without any evidence as to penetration or emission of seed, sufficient to sustain the conviction.

The case was heard by MEREDITH, C.J.O., MACLAREN and MAGEE, JJ.A., RIDDELL and MASTEN, JJ.

D. O'Connell, for the prisoner.

Edward Bayly, K.C., for the Crown.

THE COURT answered the first question in the affirmative, and directed a new trial. The second question was answered in the negative, and the third in the affirmative.

### HIGH COURT DIVISION.

CLUTE, J.

MARCH 1ST, 1916.

\*EVANS v. FARAH.

*Vendor and Purchaser—Agreement for Sale of Land—Breach by Purchaser—Damages—Resale by Vendor—Recovery by Vendor of Deficiency on Resale and Expenses Incurred—Application of Deposit—Acquiescence—Reasonable Price on Resale—Items of Expenses—Commission—Interest—Insurance—Taxes—Solicitor's Fees.*

Action to recover \$1,497.03, the balance alleged to be due to the plaintiff in the following circumstances. The plaintiff sold the property to the defendant for \$30,000; the defendant paid \$2,000 as a deposit; the defendant afterwards refused to complete the purchase; the plaintiff resold for \$28,000; the plaintiff alleged that his loss by reason of the sale to the defendant falling through was \$1,497.03, in addition to the \$2,000.