

The plaintiff, in his amended statement asks judgment, as damages, against the defendants for a sum equal to the \$5,000 paid and interest thereon, in addition \$1,000 for loss of time, expenses, etc.

The plaintiff had to borrow the money, I think, to make this payment, and if he has been discounting promissory notes since that time to keep it going it has probably cost him \$700 or \$800. I have no doubt but that his loss would in all amount to as much as he claims, but he cannot expect to indulge in wild dreams of wealth without being subjected to some loss when the rude awakening comes.

I think I will be right in assessing the damages at \$6,000; and, as I have already said, with costs. These will include the costs of the commission executed in New York city.

The counterclaim will be dismissed with costs.

HON. MR. JUSTICE MIDDLETON.

FEBRUARY 11TH, 1914.

EISENSTEIN v. LICHMAN.

5 O. W. N. 887.

*Vendor and Purchaser—Specific Performance—Conduct of Purchaser
—Title—Reference.*

MIDDLETON, J., gave judgment for plaintiff, a vendor in an action for specific performance of an alleged agreement for the purchase of certain lands, and directed a reference as to title.

Action by vendor for specific performance.

W. Proudfoot, K.C., and J. C. McRuer, for plaintiff.

A. Cohen, for defendant.

HON. MR. JUSTICE MIDDLETON: — I think the document in question was signed with the intention of making it a binding offer, and that there is no foundation for the defence set up.

After the defendant consulted his solicitor his conduct is only consistent with an affirmation of the transaction.

The plaintiff was ready to close on the day named for closing—the defendant was not. In view of the way the matter was carried on between the solicitors, the failure to meet to close on the 5th looks like a trick to avoid the contract. It was as much the defendant's fault as the plaintiff's that a meeting was not arranged for that day.

There is some question as to title which was not ripe for discussion; there will be a reference as to it.