

he could shew that he had sustained as a result of the defendants' breach of contract; the difficulty was in estimating that damage.

After stating the rules of the Exchange and considering what the defendants might have done to obtain payment if the sale had been a sale upon the Exchange, the learned Judge said that there was great uncertainty as to what sum might have been realised, and it seemed impossible to assess the damages at anything like the amount claimed by the plaintiff; but it seemed reasonably certain that he had lost something, and it was a fair inference from the evidence that he had lost not less than the equivalent of the 25 per cent. of the purchase-price which ought to have been put up as an initial deposit; that would amount to \$750; and no more could be awarded.

There should be judgment in favour of the plaintiff for \$750 and costs. If the defendants desired it, the judgment might contain provisions for their benefit in case they should succeed in getting from the purchaser the whole or some part of the balance of the purchase-price. When, if ever, it should appear that the sums received by the plaintiff, including the damages, amounted to the purchase-price, with interest from the time when payment ought to have been made, any further sums paid by the purchaser ought to go to the defendants.

HOEHN V. MARSHALL—FALCONBRIDGE, C.J.K.B.—JULY 2.

Mortgage—Sale under Power—Duty of Mortgagee to Mortgagor—Breach—Evidence—Representative of Mortgagor—Judgment for Redemption—Interest—Costs.]—Action to set aside a conveyance and to recover possession of land, tried without a jury at London. FALCONBRIDGE, C.J.K.B., in a written judgment, said that wherever there was any conflict of testimony between witnesses for the plaintiff and those of the defendants, he accepted the statement of the former class. The executor had a bona fide offer of \$1,000 for the property from Haskett, and this was communicated to the solicitor who was assuming to exercise the power of sale, and who nevertheless went on and sold for \$650—enough to cover the amount due on the mortgage and on a small judgment for dower in favour of the testator's widow, one of the defendants. In exercising a power of sale a mortgagee may not be exactly a trustee for the mortgagor, but he owes him some duty, a duty which was shamelessly disregarded in this case. There were suspicious circumstances about the transaction: the assignment of the mortgage to Catharine