

RIDDELL, J., read a judgment in which he said that he agreed that the entries in the book of the deceased vendor were competent evidence; but he was unable to agree with the conclusions of the trial Judge as to the weight of evidence.

The learned Judge, after discussing the evidence, said that it seemed to him that the case stood thus: the parties were not at one as to what the contract was—not *ad idem*—or the sale was of a half interest only. The defendants offered to carry out the sale of a half interest or call the deal off. The plaintiff preferred the latter, if he must take either, as he must. There should be judgment declaring that no contract was entered into, with the proper consequences. The defendants should have the costs of the appeal; otherwise, there should be no costs.

LENNOX, J., concurred.

MASTEN, J., in a written judgment, said that he agreed that the entries in the book of the deceased vendor were admissible in evidence; but was unable to agree in the conclusion of the trial Judge that the plaintiff had made out a case justifying specific performance of a contract for the sale of the whole of the deceased's interest in the land.

Appeal allowed.

HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS.

OCTOBER 16TH, 1916.

FORBES v. DAVISON.

Appeal—Leave to Appeal from Order of Judge in Chambers—Rule 507—Practice—Discovery.*

Motion by the plaintiff for leave to appeal from the order of RIDDELL, J., ante 61.

Peter White, K.C., for the plaintiff.

T. R. Ferguson, K.C., for the defendant.

MIDDLETON, J., in a written judgment, said that no question of principle was involved. An affidavit on production is conclusive unless it appears from the examination for discovery of