

POWELL v. WEAVER—MIDDLETON, J.—JAN. 19.

Contract—Agreement to Pay Money and Deliver Bonds—Action to Enforce—Failure to Deliver Bonds—Money Damages Based on Par Value of Bonds—Form of Judgment—Claim over for Indemnity or Contribution—Third Parties.]—Action to recover \$2,912.80 alleged to be due under an agreement, and damages for non-delivery of certain bonds pursuant to the agreement. The defendant claimed indemnity or contribution from two persons brought in as third parties. The action was tried without a jury at Kitchener. MIDDLETON, J., in a written judgment, said that at the hearing he found that the defendant was personally liable to the plaintiff upon the agreement, and there must be judgment for the plaintiff for the amount payable in cash. Part of the price was payable in bonds. If bonds can be delivered within 30 days, the plaintiff must accept them, as the contract provides; if they cannot be found, then damages must be awarded upon the footing of the bonds being worth par. The better form of judgment will be to award a present recovery for money, and to provide that, upon transfer and delivery of bonds within 30 days, there be satisfaction pro tanto of this recovery. The exact amount can probably be computed without difficulty by the Registrar if the parties cannot agree.—The defendant claimed to recover against the third parties, upon the ground that he acted as their agent. The defendant and third parties were interested together in a common venture, and, unfortunately for the defendant, he made the contract with the plaintiff, under which he assumed personal liability. The third parties carefully guarded themselves against any liability over and above the amount of their respective subscriptions. There was no agency, and no right of indemnity. The defendant expected the transaction to be carried out in a way that would free him from liability; he neglected to secure indemnity from any of his associates, and there was no implied obligation to indemnify him. The liability of the third parties was upon their subscriptions, and was limited to the amount subscribed and the terms of the subscription. The claim for indemnity (or contribution) therefore failed. T. A. Beament, for the plaintiff. R. McKay, K.C., for the defendant. H. E. Rose, K.C., for the third party Snider. J. M. Ferguson, for the third party Cronin.