

CLAREY V. MISKELL—SUTHERLAND, J.—FEB. 14.

Landlord and Tenant—Recovery of Possession by Landlord—Rent—Account—Payment into Court—Costs.]—Action by the lessor of a moving picture theatre against the lessee to recover possession of the premises and for rent, taxes, license fees, etc. The plaintiff obtained judgment for possession by default, and took possession. The money claim was in dispute, and the trial thereof took place, without a jury, at Ottawa. The sum of \$235.57 was paid into Court by the defendant, but there was no tender before action. The learned Judge disposed of the disputes arising upon the evidence in a written judgment in which he stated his findings of fact. His conclusion was, that \$235.57 was, at the time it was paid into Court, a substantial payment of everything due by the defendant to the plaintiff. The plaintiff was compelled, however, to bring the action; and he should be allowed \$75 as costs down to the time the money was paid in; no costs otherwise in the action to either party. F. A. Magee, for the plaintiff. A. W. Fraser, K.C., for the defendant.

BOYD V. BRODIE—KELLY, J.—FEB. 14.

Evidence—Conflict of Testimony—Finding of Fact of Trial Judge—Principal and Agent—Investment—Liability of Agent.]—The plaintiff sought in this action to make the defendant account for \$2,000 which, as was alleged, the defendant received from the plaintiff as the plaintiff's agent. This was money which the plaintiff paid to purchase a share or interest in a mining property, in which the defendant also invested \$500. The plaintiff asserted that he was induced to enter into the transaction by the defendant's representations (1) that he (the defendant) was investing in the enterprise an equal amount with the plaintiff; and (2) that the transaction was one in which there would be a quick turn-over. The purchase was made about the end of April, 1909. The action was tried without a jury at Toronto. The learned Judge, after reviewing the evidence in a written judgment, said that, because of the remarkable contradiction between the stories of the plaintiff and defendant respectively, he had gone over the whole case with much anxiety; and, after the most careful consideration, he found no reason for believing the plaintiff's story rather than the defendant's.