

ferred back to the stock sheet. Deposit to be \$100. If stock exceeds \$7,000, balance to rated (sic) at 30 cents on the dollar. \$2,000 cash on completion of stock taking and checking. Balance in two and four months equal notes. If stock exceeds \$7,000, deal may be declared off."

In June the plaintiff "declared the purchase off," claiming that the stock exceeded \$7,000. He had, however, in the meantime paid \$1,000 on account of the purchase money.

He thereupon brought an action against the present defendant, 2nd October, 1903, setting out that he (plaintiff) had rescinded the contract, and that he had demanded the return of the \$1,000, and he claimed the sum of \$1,000 and interest from 5th June, 1903. The defendant pleaded the contract, the stock taking, and the exercise by the plaintiff of his option to purchase; that the plaintiff took possession of the stock and sold portions of it, and retained the proceeds of the portions so sold, and dealt with the stock in all respects as if he were the owner thereof; that subsequently plaintiff abandoned the possession of the goods and refused to complete the contract; that consequently defendant notified plaintiff that he would proceed to sell the goods and hold him responsible for the loss and damage the defendant might sustain; that defendant did try to sell the stock en bloc and failed; and that he was now endeavouring to dispose of it by retail; that he was at all times ready and willing to carry out the agreement.

The case came on for trial before Meredith, C.J., at Barrie, 16th May, 1904: the trial Judge dismissed the action with costs: see *Brown v. Dulmage*, 4 O. W. R. 91: but "without prejudice to any action the plaintiff may choose to bring, based upon the alleged wrongful act of defendant in selling the goods, or for an account of the proceeds of the sale." The trial Judge added: "I must not be taken to indicate that, in my opinion, any such action, on the facts of the case, is maintainable."

Then this action was brought, plaintiff alleging the contract, the delivery of the goods by defendant to plaintiff, and the payment of \$1,000 on account of the purchase price, conversion by the defendant of the stock, and claiming a declaration that the defendant had so converted the stock, damages for such conversion, and in the alternative for an accounting by the defendant "if the Court should be of