

Nor was the plaintiff company's case assisted, as was contended, by the defendant's temporary possession. The Court adjudges specific performance of a parol agreement followed by the delivery to the vendee of possession. But the fact of possession would not in any case supply what was lacking here, namely, an agreement in which as to all its material terms the minds of the parties had fully met. The slight acts of damage by the defendant while in possession, of which the plaintiff company complained, would probably be amply compensated for by saying nothing about the \$100 deposit.

*Appeal dismissed with costs.*

OCTOBER 12TH, 1915.

\*LESLIE v. STEVENSON.

*Contract—Judicial Sale of Land by Tender—Satisfaction of Liens—Threat of Proceedings to Set aside Sale—Promise of Purchaser to Pay Claim of Lien-holders on Resale—Enforcement—Consideration—Forbearance—Statute of Frauds—Fraudulent Denial of Agreement—Finding of Fact of Trial Judge—Appeal.*

Appeal by the defendant from the judgment of BOYD, C., 34 O.L.R. 93, 8 O.W.N. 421.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, and MAGEE, J.J.A., and KELLY, J.

H. J. Scott, K.C., for the appellant.

R. S. Robertson, for the plaintiffs, respondents.

GARROW, J.A., delivering the judgment, stated the facts at length, and said that upon the question of the credibility of the witnesses the Court was bound by the Chancellor's finding in favour of the plaintiffs, and that his conclusion as to the promise made by the defendant could not be disturbed. Adopting that conclusion, the Court had to consider (1) the effect of the evidence or the nature of the contract created, and (2) the question of the Statute of Frauds as a defence.

The only agreement made was that between the plaintiff McNeill and the defendant on the morning after the sale by tender. McNeill stated that, after preliminaries, the defendant said, "I suppose you would be satisfied if you got what is coming to you out of this business;" and McNeill said that he