

the rate of \$100 a year for 31 years. It was admitted that this was the sole point in dispute.

The plaintiff and his wife gave evidence at the trial that having arranged verbally all the terms of the contract previously, they at his request went on the 28th of February, 1913, to the office of a conveyancer, named Lagois, to have the deed and mortgage of the Clarence property, executed and delivered. They say that after they had executed the deed in favour of the defendant the latter then for the first time made the contention, through a friend of his named Lefebvre whom he had brought with him to Lagois' office, that the mortgage was to be payable at the rate of \$100 a year for 31 years and refused to execute one in any other terms.

The defendant was not at the trial and no evidence was given on his behalf.

I have no doubt, from the evidence offered on behalf of the plaintiff that the mortgage was to be payable as testified to by them and not as contended for on behalf of the defendant. I think it more than likely that if the defendant had been unaccompanied by his friend Lefebvre he would probably have executed the mortgage in the terms of the bargain. His officious friend appears to have endeavoured to get for him better terms than those agreed upon and instead brought about this litigation.

All the acts done by both parties are plainly referable to the bargain in question and there has been such acts of part performance on the part of the defendant as to entitle the plaintiff to succeed in this action. The plaintiff on his part has been ready and willing to do everything that he was called upon to do. His deed to the defendant of the property in Clarence has been executed and a delivery thereof tendered. The only reason that the bargain has not been completely carried out is on account of the refusal of the defendant to execute the mortgage payable in the terms agreed upon.

There must be judgment, therefore, for the plaintiff for specific performance of the agreement as asked. The defendant must execute a valid mortgage in favour of the plaintiff upon the lands in the township of Clarence for the sum of \$3,100 payable as already indicated and until such time as he does the plaintiff will have a lien upon such lands for the purchase money.