

Ross had no power to execute any bill of sale, or to receive any money. That was for the defendant, and Ross did not attempt to, nor did he in fact, exceed his power.

On the 31st December, 1912, the defendant, upon the advice of Mr. Mitchell, who was not then acting for the plaintiff, accepted plaintiff's offer of \$1,100, the plaintiff paying \$400 cash and giving two notes of \$350 each for the balance.

Both plaintiff and defendant then supposed that the property was at Sassiganaga Lake, and in the undisputed constructive possession and control of the defendant.

The fact was, that unknown to the defendant and without his consent, McClellan had wrongfully taken possession of this property, and removed it from Sassiganaga Lake, and held it, afterwards refusing to give it up to the defendant, or to the plaintiff.

The plaintiff, upon the purchase by him, had the right to possession of said property, but he did not exercise that right, nor did he attempt to do so, and he refused to take legal proceedings to get possession, and he refused to assist the defendant to do so, but contended that he had a legal claim and right of action against the defendant.

The defendant, therefore, was obliged to stand upon his legal rights.

There was no warranty on the part of the defendant, that the property was at Sassiganaga Lake, and according to the plaintiff's own contention, the sale was completed and valid and he had the right to the property.

Had he taken the necessary steps to get it he could have obtained possession of it.

As soon as it came to the knowledge of defendant that the property had been taken possession of and removed he did all that he could without plaintiff's assistance; and, finding that plaintiff insisted upon attempting to hold defendant, and was not willing to take proceedings to get possession, the defendant tendered to plaintiff the money he had paid, and interest thereon, and a return of the notes, and cancelled the sale.

There was no express agreement on the part of the defendant to make delivery of the property.

There was simply the sale made in good faith.