

tended that it was the duty of the vendor to keep himself in such a position as to be able to convey; and that, his equity having now disappeared, he could not obtain specific performance. The plaintiff replied that, had the defendant carried out his contract, the sale would not have taken place.

Whatever might be the solution of this controversy, the learned Judge was satisfied that the situation was such that it would be so inequitable to enforce specific performance that this relief should not be granted, but damages; and there was nothing to justify an award of more than nominal damages. The value of each equity of redemption was conventional, not actual; and it had not been shewn that the value of the defendant's property was greater than its nominal valuation in the exchange.

The plaintiff became liable for commission (\$130.10) to the real estate agents, and he should have judgment for that sum and \$10 nominal damages, \$140 in all, and \$125 costs. But for the unfounded charges of fraud, no costs would have been given.

MIDDLETON, J.

DECEMBER 26TH, 1918.

LEE v. GUNDY & GUNDY.

Vendor and Purchaser—Agreement for Sale of Land—Action by Assignee of Purchaser for Specific Performance—Agreement Forfeited by Vendors and Land Resold before Assignment—Assignee (by Error) Assured by Vendors that Agreement in Force—Acceptance of Payment on Account of Purchase-money—Agreement not Capable of Performance by Reason of Intervention of Right of Third Person—Damages—Measure of—Recovery only of Money Paid by Assignee to Assignor and Money Paid to Vendors by Assignee—Set-off—Costs.

Action by the purchaser for specific performance of an agreement for the sale and purchase of land, or, in the alternative, for damages.

The action was tried without a jury at Sandwich.

A. B. Drake, for the plaintiff.

R. L. Brackin, for the defendants.

MIDDLETON, J., in a written judgment, said that the defendants owned a large number of lots in or near Ojibway, and on the 23rd September, 1913, agreed to sell three lots for \$1,900 to Tung Tim