

would be recognised, and that he would not be put in peril of losing his right to redeem his property until the thirty days' notice required by sub-sec. 2 of sec. 165 of the Assessment Act would be given to him at that address.

That the notice was not so given is, in my opinion, fatal.

The appeal should be allowed and the plaintiff be given the right to redeem the property in the manner and on the terms set out by the learned Chancellor.

Annotation by Editor.

See *Beatty v. McConnell*, C. R. [1908] A. C. 166, and *Russell v. Toronto*, C. R. [1908] A. C. 455.

HON. MR. JUSTICE CLUTE.

DECEMBER 17TH, 1912.

McINTYRE v. STOCKDALE.

4 O. W. N. 482.

Vendor and Purchaser—Specific Performance—Part Performance—Resale of Lands—Damages—Right to—Judicature Act, sec. 41, 58 (10)—Remedies.

Action for specific performance of an agreement to sell a house and lot to plaintiff or for damages. There was no memorandum of agreement, but plaintiff paid \$500 down, went into possession, and made monthly payments of \$20 for 16 months. By reason of the carelessness of both parties, the deed and mortgage, though prepared, were never executed. Defendant had re-sold the property, disregarding plaintiff's claims.

CLUTE, J., *held*, that the fact that defendant had put it out of his power to give specific performance, did not deprive plaintiff of his right to damages.

Review of authorities and dictum of CHITTY, J., in *Lavery v. Pursell*, 39 Ch. D. 508, that where specific performance could not be given, damages could not be given since the Judicature Act, disapproved.

Judgment for plaintiff for return of moneys paid and \$200 damages, with costs.

Either party to be at liberty to take a reference at their peril.

Action for specific performance of the sale of a house and lot in North Bay by the defendant to the plaintiff or for damages. Tried at North Bay, December 9th, 1912.

J. C. W. Bell, for the plaintiff.

R. McKay, K.C., and G. A. McGaughey, for the defendants.