

SLATKY V. KAUFMAN—BRITTON, J.—MARCH 22ND.

Vendor and Purchaser—Agreement for Sale of Land—Incumbrance—Oral Agreement in Respect of—Onus—Failure of Proof—Discharge of Incumbrance—Payment of Amount to Purchaser—Counterclaim—Set-off.—Action to compel the defendant to procure the discharge of a mortgage upon land sold to the plaintiff, and for other relief. Counterclaim upon promissory notes. The defendant, being the owner of the equity of redemption in a farm, agreed to sell it to the plaintiff. When the sale was about to be closed, it was discovered that the defendant had placed a second mortgage (for \$1,500) on the farm, which had not been taken into consideration in settling the terms of sale and making the adjustments. The defendants admitted this; but said that the promissory notes made by the plaintiff in part payment of his purchase-money were not paid when presented for payment, and that an oral agreement was then made between the parties that the notes should be renewed, and that until these notes were paid the second mortgage should remain upon the property, and when these notes were paid the mortgage should be discharged. The action was tried without a jury at Toronto. The learned Judge said that the onus of proving this agreement was upon the defendant, and that he had not established it; nor had the plaintiff ratified what the defendant had done nor waived his right to have the original sale agreement carried out. Judgment for the plaintiff requiring the defendant to have the second mortgage released by a statutory discharge registered within two weeks, and, in default, for payment by the defendant of \$1,500 and interest from the date and at the rate provided in the second mortgage, with costs of the action payable by the defendant to the plaintiff. Judgment for the defendant with costs upon his counterclaim for \$516 and interest. If the defendant does not cause a discharge to be registered, but pays the \$1,500 and interest and costs, he is to be entitled to set off pro tanto the amount of his judgment on the counterclaim for debt and costs. W. A. McMaster, for the plaintiff. G. R. Roach, for the defendant.

REYNOLDS V. CITY OF WINDSOR—LENNOX, J.—MARCH 22.

Nuisance—Dumping Refuse near Vacant Land in City — Liability of City Corporation—Opportunity to Abate Nuisance—Delay of Judgment.—Action for damages for injury to the