

A. E. Lussier, for plaintiff.

C. A. Seguin, for defendant.

HON. MR. JUSTICE SUTHERLAND:—In the month of February, 1913, the plaintiff was the owner of the south half of the north half and the north half of the south half of lot No. 7 in the 9th concession of the township of Clarence, in the county of Russell, in the province of Ontario, containing 100 acres more or less, together with the farm implements and cattle thereon, and the defendant was the owner of a parcel of real estate in the town of Hull, in the province of Quebec.

The parties are agreed that in the said month an agreement was entered into between them, only one term of which is now in dispute.

The following written admissions were put in at the trial:

(1) "It is admitted an agreement for sale and purchase was made between the plaintiff and defendant by parol in regard to the lands as described in the plaintiff's statement of claim, wherein the price for the lands and farm machinery was fixed at \$4,350 of which \$1,250 was to be cash (which cash payment was made by defendant and accepted by plaintiff by the transfer of a property in Hull from the defendant to the plaintiff); balance of principal with interest yearly at 5 per cent. per annum from the 1st February, 1913, to be secured by mortgage, interest to be paid on 1st February, in each year along with the \$100 on the principal the first payment to be made on the 1st February, 1914. The number of years in which the principal should be repaid is in dispute.

(2) It is admitted that there was part performance by the plaintiff by the exclusive and unequivocal delivery on or about the 29th day of January, 1913, by the plaintiff of possession given of said lands and farm machinery to the defendant and accepted by him referable to the said agreement alone and to nothing else so as to take the case out of the Statute of Frauds (which has not been pleaded by the defendant.)"

The plaintiff and his wife testified that the bargain was that the defendant was to execute in favour of the plaintiff on the Clarence property a mortgage for \$3,100 to be payable as follows: \$100 a year for 14 years and the balance at the end of the 15th year. Counsel for the defendant contended at the trial that the said \$3,100 was to be payable at