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HON. MR. JUSTICE BRITTON.

JUNE 30TH, 1913.

HAMILTON v. SMYTHE.

4 O. W. N. 1572.

*Sale of Goods—Specific Performance—Mill and Machinery—Mutual Mistake as to Locus and Possession — Inequitable Conduct of Plaintiff—Costs.*

BRITTON, J., refused specific performance of a contract for the sale of certain machinery, on the ground of mutual mistake, where both parties had acted in good faith and believed the machinery to be at a certain place, whereas, the fact was that it had been wrongfully seized by a third party and taken away, and plaintiff, although claiming that the title therein had passed to him, refused to take any steps to recover the same.

Action for specific performance of a contract to sell to plaintiff the mill and equipment of Taplin Timber Co., at Sassaginata Lake, and damages for delay in carrying out the same or in the alternative for \$6,000 damages.

Geo. Mitchell, for plaintiff.

Robt. McKay, K.C., for defendant.

HON. MR. JUSTICE BRITTON:—The defendant was the owner of a mill and machinery, belting and accessories, which he desired to sell.

He was in negotiation with one McClellan, who desired to purchase.

The plaintiff knew of this, and while these negotiations were on, the plaintiff wrote to the defendant, making an offer of \$1,100 for the property.

This the defendant declined.

George Ross, of Cobalt, was acting for the defendant in endeavouring to effect a sale to McClellan.