

had improved the land, to be allowed the value of such improvements, whereupon, the Commissioner of Crown lands directed that before the patent issued, the amount, if any, payable to the defendant for his improvements and work on the land, after proper deductions, should be ascertained. A consent judgment was obtained referring it to the Master to enquire and report as to what sum, if any, the defendant was entitled to for permanent improvements and work done upon the land; for maintenance of the family of the locatee; and for any advances made to the family, after making all proper deductions:—

*Held*, that while the consent judgment was silent as to the principle to be applied in ascertaining the amount payable to the defendant for the improvements, etc., that, having regard to the object of the Crown Lands Department, the proper mode was to award such sum as in foro conscienti the defendant ought to receive.

The cost of fruit trees and of the planting of them is not the limit of the amount to be allowed in estimating such improvements, for beyond that there was the care of the trees, interest on outlay, etc.

*George Kerr*, for plaintiff. *G. H. Tucker*, for defendant.

Trial of Action, Street, J.]

[Nov. 28, 1900.

GENTLES v. CANADA PERMANENT, ETC., MORTGAGE CORPORATION.

*Mortgage—Sale under power—Tender—Place and time of tender.*

The defendants under power of sale in a mortgage advertised a sale of lands at Walkerton, in the proximity of which place the mortgage lands were situated, on January 19th. On January 17th, the mortgagor telegraphed the defendants at Toronto asking amount required to pay mortgage, to which the defendants telegraphed a reply. At ten o'clock on January 19th, the defendants received in a registered letter the amount required to redeem the mortgage, but in accordance with the procedure adopted in respect to monies received by them, this payment did not come to the accountant's attention till about 11 a.m. when the defendants at once telegraphed and telephoned to their inspector, who had gone to Walkerton to superintend the sale, that the money had been paid. The inspector received this message a few minutes after he had signed a contract for the sale of the property to the plaintiffs, the auction sale having been held at eleven o'clock, the hour advertised.

*Held*, that the plaintiff was entitled to specific performance of his contract for that under the circumstances the defendants were not obliged to receive the money in payment of the mortgage, as the mortgagor had not tendered it a reasonable time before the sale.

*J. H. Moss*, for plaintiff. *Monro Grier*, for defendants.