

accordingly, but without costs, because he has asked for performance of the agreement as drawn, and is not entitled to that relief. Should he refuse to take this judgment, the action will be dismissed with costs. The land is sufficiently identified by the description in the agreement to satisfy the Statute of Frauds; it is clear that it fits the lot owned by plaintiff, and it has not been shewn that it would in all respects fit any other lot.

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OCTOBER 5TH, 1903.

DIVISIONAL COURT.

RE GLANVILLE v. DOYLE FISH CO.

*Prohibition—Division Court—Territorial Jurisdiction—Cause of Action, where Arising—Contract by Telegraph.*

Appeal by plaintiffs from order of FERGUSON, J., in Chambers, ante 616, for prohibition to the 3rd Division Court in the district of Algoma.

Grayson Smith, for appellants.

Gideon Grant, for defendants.

THE COURT MEREDITH, C.J., MACMAHON, J., TEETZEL, J.), dismissed the appeal with costs.

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OCTOBER 5TH, 1903.

DIVISIONAL COURT.

FARMERS' LOAN AND SAVINGS CO. v. MUNNS.

*Summary Judgment—Rule 603—Implied Covenant for Payment—Leave to Defend—Terms.*

Appeal by defendant from order of STREET, J., ante 503, reversing order of Master in Chambers (ib.) which dismissed a motion for summary judgment under Rule 603, and allowing plaintiffs to enter judgment.

Gideon Grant, for appellant.

W. M. Douglas, K.C., for plaintiffs.

THE COURT (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.) made an order that upon the filing by the defendant of a further affidavit, and upon payment of the costs imposed by the order appealed against and the costs of this appeal, the order and judgment be rescinded; the plaintiffs' claim as indorsed on the writ of summons to stand as a statement