

ly understood and agreed that time is to be considered the essence of this agreement and unless the payments are punctually made, the said party of the first part shall at his option declare this agreement null and void, all payments made thereunder shall be forfeited and the said party of the first part shall be at liberty to re-sell the said land, the said party of the second part hereby agreeing to convey to the said party of the first part her interest in the same, when and as soon as such default occurs."

The lease contained a proviso for re-entry, in the statutory short form, for non-payment of rent, so that the right of re-entry could not be exercised until 15 days after default. The lessor afterwards conveyed the land in fee to the defendant, Palmatier, subject to the lease and agreement.

Default having occurred in payment of the rent due on the 10th of October, 1897, Palmatier leased the property to the defendant Mills who at once entered into possession.

Plaintiff brought this action for, amongst other things, specific performance by the defendant of the agreement of sale and to recover possession of the property under the lease, alleging acts shewing waiver of the right of re-entry and that defendant Palmatier had not formally declared the agreement of sale to be null and void, but on the contrary had proceeded with an attempt to enforce payment of the rent in arrear.

*Held*, 1. Only acts of waiver of the right to re-entry done after the 31st of October, when it first accrued, could have any effect as such, and none were proved.

2. If it had been shewn that defendant had persisted, after the 10th of October, in his attempt to collect the rent overdue, it would have constituted a waiver of the right to declare the agreement of sale null and void, but nothing of the kind, for which the defendant who was out of the Province ought to be held responsible, was shewn to have been done.

3. The making of the lease to Mills, his taking possession under it, and the other circumstances following the default and made known to the plaintiff were sufficient to constitute an exercise of the option to cancel the agreement of sale without the making of any formal declaration to the purchaser.

*Culver*, Q.C., and *Pitblado*, for plaintiff. *Ewart*, Q.C., *Hough*, Q.C., and *Huggard*, for defendants.

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Full Court.] CITY OF WINNIPEG v. C. P. R. Co. [June 30.

"Municipal" taxes do not include "school" taxes.

Judgment of BAIN, J., noted and vol. 34, p. 706 affirmed with costs. DUBUC, J., dissenting.

*Howell*, Q.C., for plaintiff. *Aikins*, Q.C., for defendant.