

The defendant, although he had appeared and delivered a defence, was not present nor represented at the trial.

ORDE, J., in a written judgment, said that on the 1st December, 1919, the plaintiff and defendant entered into an agreement under seal whereby the defendant agreed to sell to the plaintiff the license for a certain timber-berth for \$19,000, of which \$500 was paid upon the execution of the agreement; of the balance, \$6,500 without interest was to be paid on or before the 5th January, 1920, and the remaining \$12,000 in 4 instalments, secured by 4 promissory notes. The agreement did not say when these promissory notes were to be delivered, but its whole tenor made it clear that they should be delivered on or before the 5th January, 1920, along with the \$6,500. The plaintiff was to have the right to enter upon the land at once for the purpose of inspection or of establishing camps, and to commence active lumbering operations after payment of the \$6,500. The defendant was to procure a transfer of the license (which was then incumbered) to the plaintiff, free from incumbrance, and the plaintiff was to assign it to the defendant as security for the payment of the promissory notes. Time was to be considered as of the essence of the agreement, and if the payments were not made promptly the defendant was to be at liberty to enter upon the land, and lease or sell it free from any claim of the plaintiff, and any moneys paid by the plaintiff should be forfeited as liquidated damages and not as a penalty; and if the \$6,500 was not paid on the 5th January, 1920, the plaintiff was not to be at liberty to commence cutting.

Upon the strength of the \$500 paid upon the execution of the agreement, the plaintiff entered into an agreement to sell the limit to other persons for \$25,000, of which a substantial sum was to be paid by the 31st December, 1919. The plaintiff depended on the payment to be made by these sub-purchasers to enable him to pay the \$6,500 to the defendant on the 5th January, 1920. The plaintiff applied to the defendant to extend the time for payment to the 19th January. The defendant agreed to this, on condition of the plaintiff sending him \$1,000 by the 12th January, and wrote to the plaintiff accordingly, adding that if he did not hear from the plaintiff by that day he would "close a deal" with some other persons. The plaintiff was unable to pay the \$1,000, but wrote to the defendant advising that his (the plaintiff's) sub-purchasers were willing to complete the purchase. On the 15th January, the defendant wrote that it was too late, as he had accepted another offer.

The plaintiff now sought the return of the \$500 which he had paid and \$11,000 damages for the alleged breach of contract, that sum being the profit which the plaintiff would have made on the resale to his sub-purchasers.