

THE
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APRIL 8TH, 1902.

DIVISIONAL COURT.

RANKIN v. STERLING.

Vendor and Purchaser—Specific Performance—Possession—Waiver—Improvements—Account as to—Title by Possession—Costs.

Action for specific performance of a contract dated 23rd February, 1901, for the sale to plaintiff for \$380 of a piece of land in the village of Campbellford; \$75 was to be paid down and possession given, and the balance of the purchase money with interest was to be paid on or before 1st May, 1901, when the conveyance was to be given. The defendant, the vendor, was to furnish an abstract, to make out a perfect title, and to deliver the conveyance at his own expense. The abstract shewed a good paper title from the Crown to Richard VanNorman, who became owner in 1862, and had made a mortgage to his vendor, one Wilkins, which had never been discharged. No title was ever shewn from VanNorman or Wilkins to the defendant, but his solicitor sent a statutory declaration shewing title by length of possession, which plaintiff alleged was incorrect. He, however, continued in possession and made improvements, and on the 2nd August, 1901, commenced this action. It was admitted at the trial before MacMahon, J., that the only objection to the title was how it passed from VanNorman. The trial Judge held that the plaintiff had not waived his right to have a good title shewn, and directed a reference as to title, and, in case a good title could not be shewn, directed that the Master was to ascertain the value of the plaintiff's improvements and what would be a fair occupation rent, and reserved further directions and costs. The defendant appealed.

J. J. Warren, for defendant.

G. H. Watson, K.C., and W. L. Payne, Colborne, for plaintiff.