

HON. MR. JUSTICE MIDDLETON.

JUNE 24TH, 1912.

MALOUGHNEY v. CROWE.

3 O. W. N. 1488; O. L. R.

Vendor and Purchaser—Contract for Sale of Land—Specific Performance—Statute of Frauds—Parol Evidence to Vary.

Action for specific performance of an agreement to sell certain lands which was evidenced by a receipt for the deposit paid sufficient to answer the requirements of the Statute of Frauds, but which was subsequently varied by parol evidence as to the times of payment and of delivery of possession. Defendant set up the Statute of Frauds as a defence to the action.

MIDDLETON, J., *held*, that, "where a plaintiff claims specific performance of a written contract, at the same time stating and offering to submit to subsequent parol variations, the Court will decree specific performance with the variations, if the defendant is willing to accept the same, and if not, according to the original contract."

Review of authorities.

Judgment for plaintiff for specific performance, with costs.

Action by purchaser for specific performance of agreement for sale of lands. Tried at Ottawa on the 19th June, 1912, without a jury.

Geo. D. Kelly, for the plaintiff.

J. E. Caldwell, for the defendant.

HON. MR. JUSTICE MIDDLETON:—I accept the plaintiff's evidence in this case, and where there is a conflict between the parties I give it the preference.

The plaintiff called at the residence of the defendant, for the purpose of purchasing, if possible, the property in question. He asked the defendant's price. The defendant said \$5,500. The plaintiff unsuccessfully endeavoured to beat this price down; but, being informed that \$5,499.99 would not buy the place, agreed to purchase it for the sum demanded, and paid ten dollars on account.

I think this was a completed agreement.

Thereafter the defendant suggested the giving of a receipt, and he prepared exhibit 1. This receipt I think correctly states the terms of the bargain and is sufficient to answer the Statute of Frauds.

After the receipt had been given, the plaintiff—not realising that he would as a matter of law be entitled to possession upon the payment of the price as stipulated, i.e., within ten days—asked the defendant when he would be given possession. The defendant then stated that he did not intend to give