

Reference to Parke v. Riley (1866), 3 E. & A. 215.

Upon the vendor clearing the way to a conveyance of the land free from all incumbrances, within 10 days, the transaction should be closed; and, in that event, the vendor should pay all costs subsequent to the judgment for specific performance, to be set off against the costs now payable, under that judgment, by the purchaser to the vendor; otherwise there should be the usual judgment upon failure to convey after reference; and the vendor should pay all costs subsequent to the judgment for specific performance, but not the costs prior to that, because that judgment was made on the terms of payment of such costs, and these costs should be set off against the costs awarded to the purchaser; and, if there be a balance in the vendor's favour, the amount of it may be deducted from the purchase-money to be returned.

LENNOX, J., concurred.

RIDDELL and MASTEN, JJ., agreed in the result, for reasons stated by each in writing.

Judgment accordingly.

SECOND DIVISIONAL COURT.

APRIL 28TH, 1916.

*NAEGELE v. OKE.

Contract—Permission to Draw Water from Neighbouring Land—Easement—Lease—License—Personal License not Passing with Land—Registry Act.

Appeal by the defendant from the judgment of the Judge of the County Court of the County of Huron in an action in that Court brought to obtain a declaration of the right of the plaintiffs to maintain an hydraulic ram upon and take water from the defendant's land, for the restoration of the ram to working order, and for damages. The judgment of the County Court Judge declared the plaintiffs' right to the easement claimed, granted an injunction restraining the defendant from interfering therewith, and awarded the plaintiffs \$10 damages and the costs of the action.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

C. Garrow, for the appellant.

W. Proudfoot, K.C., for the plaintiffs, respondents.