

tion that the money paid by the defendant was forfeited, and for possession of the land.

The action was tried without a jury at Sandwich.

J. D. Grandpré, for the plaintiff.

F. D. Davis, for the defendant.

SUTHERLAND, J., in a written judgment, set out the terms of the agreement, which was in writing, and provided for a cash payment of \$200, and for payment of the balance, \$1,600, by monthly instalments, with interest.

The contract contained a clause providing that time was to be considered of the essence, and, unless the payments were punctually made, the agreement should be null and void, and the vendor should be at liberty to resell.

The defendant made the cash payment and nine monthly payments of \$20 each, the last being for the one due on the 24th July, 1917.

Between the date of the contract, soon after which the defendant went into possession, and the 8th January, 1919, the defendant made improvements which had substantially enhanced the value of the property.

The defendant failing to make the further monthly payments for which the plaintiff was pressing, the latter, on the 8th January, commenced this action.

On the day the writ was issued, and before she was served therewith, the defendant went to the plaintiff with \$100 in cash, admittedly the amount of the then overdue monthly instalments, and tendered that sum to him. The defendant said that the plaintiff told her that he would not accept the arrears unless she paid \$50 for expenses. The costs were at that time less than \$50.

The defendant entered an appearance; and the plaintiff moved for summary judgment; the motion was dismissed.

Some time later, the defendant's husband went to the plaintiff and offered to pay him \$120 in settlement. By this time a further instalment of \$20 had, no doubt, come due under the agreement. The husband testified that the plaintiff refused to accept the money, and said he wanted \$50 more and that he (the husband) replied to this demand by saying he would not give a cent more than the \$120. The defendant thereupon paid the sum of \$120 into Court with her defence, "in full settlement of the plaintiff's alleged claim for arrears of purchase-money under covenants . . . without admitting that the said amount is payable under the provisions thereof," and asking that in any event she be relieved from any alleged forfeiture under the agreement. The plaintiff did nothing towards accepting the said sum, and the matter came on to trial in due course.