

The Ontario Weekly Notes

Vol. IV.

TORONTO, JANUARY 17, 1913.

No. 18

HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

JANUARY 3RD, 1913.

GUISE-BAGELEY v. VIGARS-SHEIR LUMBER CO.

Contract—Construction—Agreement for Lease of Lands—Lessee in Possession—Forfeiture of Lease—Rights of Lessee—Option of Purchase—Pre-emption—Termination on Forfeiture of Lease—Vendor and Purchaser—Specific Performance

Appeal by the plaintiff from the judgment of the Junior Judge of the District Court of the District of Thunder Bay dismissing an action for specific performance of an agreement for the sale of certain lands.

The appeal was heard by MULLOCK, C.J.Ex.D., CLUTE and SUTHERLAND, JJ.

C. A. Moss and Featherston Aylesworth, for the plaintiff.

N. W. Rowell, K.C., for the defendants.

The judgment of the Court was delivered by MULLOCK, C.J.:—The plaintiff and his father owned the lands in question, subject to a mortgage thereon in favour of one James Bergin. The father was also indebted to the defendants in the sum of \$809.20, for which a judgment had been recovered. Default having been made under the Bergin mortgage, the mortgagee was proceeding to sell the lands under the power of sale contained in it, when the plaintiff and the defendants entered into an agreement bearing date the 27th October, 1908, whereby the plaintiff granted to the defendants his equity of redemption in the lands, and which instrument provided that the defendants should purchase the lands when sold under the mortgage, and, upon obtaining a conveyance thereof, should lease the same to the plaintiff "for a term of five years at the annual rent of," etc., "the said