

Appeal from the judgment of His Honour Judge Winchester, Senior Judge of the County Court of the county of York, in an action for specific performance under an agreement in writing made by the plaintiff with the defendant Dunmore through one Moffat, Dunmore's agent.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

J. J. Gray for the plaintiff (appellant).

S. H. Bradford, K.C., for defendants (respondents).

HON. MR. JUSTICE CLUTE:—The defendant Taylor, it is alleged, had knowledge of this agreement, and having a legal estate, it was agreed by the parties that Taylor should convey direct to the plaintiff. Taylor signed the deed in question and in doing so attempted to close the matter, but plaintiff's solicitor objected that no plan had been filed and that there was an outstanding mortgage. The defendants allege that the plaintiff's solicitor refused to close the transaction and the deal was off.

The truth seems to be that both parties were ready to carry out the transaction, and there is no reason why it should not have been carried out if the parties and their solicitors had exercised a little more courtesy toward each other.

It is clear, however, that the plaintiff's solicitor never refused to carry out the deal, although he seems to have been abrupt when Taylor called to close the matter—the solicitor then being engaged with other clients.

The trial Judge was of opinion that the plaintiff "by his agreement, bound himself to treat the agreement as being null and void in case the vendor was unable or unwilling to remove any valid objection to the title which the plaintiff made, and having raised the objection, and the defendant not having the fee simple free from encumbrance in the property, he is bound by his agreement and it should be considered null and void. No deposit was ever paid to the defendant and no purchase money tendered to him before the matter was declared off between him and the plaintiff's solicitor. The defendant was unwilling to remove the objection raised by the plaintiff although no doubt he could have compelled