

The defence to the first action was that S. Gregoire rescinded the agreement because of failure by Bourque to perform his part. Several breaches of the agreement were alleged by the defendants.

The learned Judge was of opinion that the clause which made time of the essence of the agreement was applicable only to the payment of the instalments of the purchase-money; that there was nothing in the evidence to justify the defendants in their contention that Bourque's rights under the agreement had come to an end; and that there should be a declaration that the agreement, as against both defendants, was valid and subsisting.

This did not, of course, touch any right of the Government to cancel its sale for any default upon which there might be the right to insist; but the attitude of the Department of Lands seemed to be that it would recognise whichever party should be held by the Court to be—as between the parties—entitled.

Some timber was cut, but the evidence given at the trial did not enable the learned Judge to fix the value. Both defendants were responsible for the cutting; and, if Bourque thought it worth while, he might have a reference to the Local Master to ascertain the damages, which ought to be set off against the purchase-price. If the parties should agree upon the amount it might be stated in the judgment.

The defendants should pay the plaintiff's costs of the first action. If a reference is taken, the costs of it will be reserved until after the report.

The first action succeeding, the second necessarily failed, and should be dismissed with costs.

MIDDLETON, J.

DECEMBER 4TH, 1920.

DIAMOND v. WESTERN REALTY CO.

Vendor and Purchaser—Agreement for Sale of Land—Declaration of Court that Agreement Valid and Subsisting—Subdivision of Land by Purchaser and Sales of Lots—Moneys Received by Vendor-company — Winding-up of Company — Receiver — Account—Reference—Findings of Referee—Appeal—Jurisdiction—Interest—Taxes—Local Improvement Rates—Discount—Credit—Scope of Reference—Bill of Costs—Commission on Collections—Damages—Inducing Servant to Leave Employment.

Appeal by the liquidator of the defendant company and cross-appeal by the plaintiff from the report of an Official Referee upon