

The defendant promptly counterclaimed for specific performance and damages, and brought in as an additional defendant one George Mantley, to whom Carom had sold part of the property in rear of his store. Carom's defence to the counterclaim, in addition to the Statute of Frauds, was that the document of the 12th August was not intended to be a complete agreement between the parties; that when it was given both parties clearly understood that a formal agreement should be entered into embodying other terms agreed to between Carom and Mrs. Komer, but not expressed in the receipt; that the parties failed to agree; and that the intended purchase was abandoned.

Mantley pleaded that he was a purchaser for value without notice of the defendant's alleged interest.

While not very favourably impressed by the evidence adduced in corroboration of the plaintiff's testimony, the learned Judge found as a fact that, when the plaintiff made the sale, it was agreed that he would be given a lease, negotiations for the term of which remained open for future agreement. That term was not expressed in the receipt. Indeed, it was not in contemplation of the parties that the receipt should express all the terms of their contract. They intended that a formal contract should be drawn up, and, meeting for that purpose, failed to agree. There was never a concluded and binding agreement between the parties. Even if the term of the lease had been agreed upon, it rested in parol.

In regard to the receipt and the application of the Statute of Frauds, the learned Judge referred to the reasoning of Anglin, J., in *Green v. Stevenson* (1905), 5 O.W.R. 761, 766, not cited in the argument; Fry on Specific Performance, 5th ed., p. 183; Strahan & Kenrick's Digest of Equity, p. 379; and *Rogers v. Hewer* (1912), 8 D.L.R. 288.

The plaintiff was entitled to judgment that the registration of the receipt be deleted as a cloud on his title, with costs. The counterclaim should be dismissed with costs.

MIDDLETON, J., IN CHAMBERS.

MAY 22ND, 1920.

RE BELL.

Infants—Custody—Right of Father—Adultery of Mother—Infants Act, sec. 2 (3)—Intention of Father to Take Children Abroad—Domicile—Welfare of Children—Costs.

Application by the father of two infants, a boy of 8 and a girl of 7 years old, for an order for their custody.

A. M. Denovan, for the father.

R. G. Hunter, for the mother.