

MIDDLETON, J.

JUNE 10TH, 1913.

*BOYD v. RICHARDS.

Vendor and Purchaser—Contract for Sale of Land—Default in Payment of Instalments of Purchase-money—Stipulation that Time of Essence and for Cancellation on Default—Relief from Forfeiture—Compensation by Payment of Purchase-money and Interest—Laches—Special Circumstances—Costs.

Action for specific performance of an agreement for the sale of land by the defendant Richards to the plaintiff Tucker.

The agreement was dated the 16th March, 1909. The purchase-money was payable in instalments; and there was a clause in the agreement providing that the stipulations as to title, time, and payments should be of the essence of the contract; and, upon default, that the vendor might treat the contract as cancelled and all payments as forfeited.

The agreement was assigned by the plaintiff Tucker to the plaintiff Boyd, in May, 1909; and the land was sold by the defendant Richards, subject to the contract with Tucker, to the defendant Parsons.

On the 24th November, 1910, the defendant Parsons gave notice to the plaintiffs' solicitors that the agreement was cancelled for default in payment of instalments. The plaintiffs then tendered the balance due, with interest. The tender was refused, and this action was brought.

The action was tried before MIDDLETON, J., without a jury, at Toronto, on the 5th June, 1913.

R. B. Henderson, for the plaintiffs.

M. H. Ludwig, K.C., for the defendants.

MIDDLETON, J., after setting out the facts, referred to *In re Dagenham (Thames) Dock Co.*, L.R. 8 Ch. 1022; *Labelle v. O'Connor*, 15 O.L.R. 519; and *Halsbury's Laws of England*, vol. 13, p. 151; and proceeded:—

While one Court, in *Labelle v. O'Connor* and a series of cases following it, has refused to accept the statement of Lord Justice Mellish in the *Dagenham* case, the Privy Council in *Kilmer v. British Columbia Orchard Lands Co.*, [1913] A.C.