

BRITTON, J.

JULY 2ND, 1907.

TRIAL.

CUMMINGS v. DOEL.

Vendor and Purchaser—Contract for Sale of Land—Completion of Houses by Vendor—Purchaser to have Right on Default of Vendor to Complete and Deduct Price from Balance of Purchase Money—Payment of Balance of Cash—Refusal of Purchaser to Deliver Mortgage for Part of Price, Houses being Incomplete—Action for Declaration of Rights—Mandatory Order for Delivery of Mortgage—Costs.

Action to compel defendant to deliver to plaintiff a charge or mortgage for \$1,400 upon property purchased by defendant from plaintiff. The instrument had been executed by defendant, but not delivered.

A. B. Armstrong, for plaintiff.

T. D. Delamere, K. C., for defendant.

BRITTON, J.:—Plaintiff sold to defendant parts of lots 211 and 212 on the west side of Indian road, in Toronto Junction, upon which land there were 2 houses erected by plaintiff. The bargain originally was a verbal one. The price, terms of payment, and all had been satisfactorily agreed upon between the parties prior to 30th October, 1906, and part of the purchase money had been paid over. On that day an agreement in writing was made. . . . By this agreement plaintiff was "to complete the erection of the houses . . . in a good, efficient, and workmanlike manner," and was to do certain specific things, including the putting in "a complete hot water heating system in each of the said houses, sufficient for the purpose of heating said houses, not less than 10 radiators in each house." All was to be completed on or before 15th November, 1906, and in default, defendant was to have the right to do the work and deduct the cost from the balance of purchase money due plaintiff. When this agreement was made there was a balance of purchase money not paid over to plaintiff, \$4,900, of which \$1,400 was to be secured by mortgage, and \$1,500, subject to being reduced by the adjustment of taxes and insurance, to be paid in cash.