FALCONBRIDGE, C.J.K.B. FEBRUARY 21ST, 1914.

McNIVEN *v.* PIGOTT.

Vendor and Purchaser—Agreement for Sale of Land—Action by Purchaser for Rescission—Possession—Alterations in Property—Title to Land—Objection—Validity—Order under Vendors and Purchasers Act — Notice of Termination of Agreement—Costs.

Action by the purchasers for rescission of an agreement for the sale of lands in Hamilton.

W. S. McBrayne and W. M. Brandon, for the plaintiffs.
E. D. Armour, K.C., and F. Morison, for the defendant.

FALCONBRIDGE, C.J.K.B.:—The plaintiffs paid $7,000 on account of purchase-money, went into possession, and made alterations in the property, removed buildings, gates and fences, and cut down, or at least cut branches off, trees.

It is true that the agreement provides that the purchasers (plaintiffs) should have possession at once; but, in view of the fact that a firm of solicitors on the 5th May, then acting for both parties, certified that the defendant had a good title, subject only to a certain mortgage, and of the other surrounding circumstances, it seems to me that the purchasers are not in a position to ask that the contract be rescinded.

These solicitors' certificate of title would appear to be, in view of my brother Middleton's judgment in Pigott v. Bell, 5 O.W.N. 314, quite correct.

But the plaintiffs retained other solicitors, and an objection to the title was argued before me. I thought the purchasers might be exposed to a "reasonable probability of litigation," and so the title was classed as doubtful: Re Pigott and Kern, 4 O.W.N. 1580.

I am informed that no order was taken out on this judgment —and it is contended that it is competent for me now to hold, in view of subsequent events, that this objection is not a valid one. In Re Consolidated Gold Dredging and Power Co., 5 O.W.N. 346, no order has been issued on a judgment of mine in Chambers; and, it being represented to me that the facts had not been quite correctly placed before me, the matter was re-opened and again argued, and I dismissed the original application.