

SECOND DIVISIONAL COURT.

DECEMBER 20TH, 1918.

WALT v. WRIGHT.

Contract—Agreement for Use of Chattels—Lease—Option of Purchase—Construction of Agreement—Ambiguity—Evidence of Surrounding Circumstances—Rent of Chattels—Right to Return of Chattels—Damages—Injunction.

Appeal by the defendant from the judgment of BRITTON, J., 14 O.W.N. 240.

The appeal was heard by MULOCK, C.J. Ex., CLUTE, RIDDELL, and SUTHERLAND, JJ.

W. C. Mikel, K.C., for the appellant.

E. G. Porter, K.C., for the plaintiff, respondent.

CLUTE, J., in a written judgment, said that the plaintiff enlisted in 1915, and went overseas in 1916 as a member of the Canadian Army Dental Corps. Before leaving Canada, he practised as a dental surgeon in the village of Stirling. The defendant was a dental surgeon practising in Trenton. On the 2nd December, 1915, the plaintiff and defendant entered into an agreement in writing for the continuation of the plaintiff's Stirling business by the defendant during the plaintiff's absence, for which the defendant was to pay rental.

Paragraph 3 of the agreement was as follows: "That during the absence of the said lessor on military service, or if, within three months of his return or discharge from said service, the said lessor, his representatives or his successors, shall require the lessee to purchase said equipment under this agreement, then the said lessee shall pay to the said lessor, or his representatives or successors, the sum of \$1,000, deducting therefrom that portion already paid as rental, and the equipment shall remain the property of the said lessor until purchased and paid for by the said lessee, and that the said lessee acquires no title to the said equipment until he has paid the said sum above specified as agreed upon under this agreement and lease."

Paragraph 4 was as follows: "That upon the payment of \$1,000, either by rent or cash during the term of this agreement and lease, then and in such case the said equipment shall become the property of the said lessee, and he shall have the right to remove or dispose of said equipment without the permission of the said lessor in writing."

The trial Judge was right in his conclusion that the true meaning of the agreement was that para. 4 contained the terms of