

ROSE, J.

DECEMBER 4TH, 1920.

BOURQUE v. GREGOIRE.

GREGOIRE v. BOURQUE.

*Vendor and Purchaser—Agreement for Sale of Unpatented Land—Public Lands Act—Purchase-money Payable by Instalments—Undertaking by Purchaser to Make Improvements and Do all Things Requisite to Obtain Patent—Time Made of Essence of Agreement by Clause Applicable only to Payment of Instalments—Alleged Breaches by Purchaser—Validity of Agreement—Enforcement—Cutting of Timber by Vendor—Damages—Reference—Costs.*

In the first action Bourque asked for a declaration that an agreement, dated the 11th July, 1918, by which the defendant S. Gregoire agreed to sell and Bourque agreed to buy an unpatented lot, for which S. Gregoire had made application under the Public Lands Act, was still in force, and for incidental relief. He also claimed damages in respect of some cutting of timber.

In the second action J. B. Gregoire claimed a declaration that, as against Bourque, he was the owner of the land, and he also asked for incidental relief.

The actions were tried together without a jury at Haileybury.  
J. M. Ferguson, for Bourque.  
H. L. Slaght, for the Gregoires.

ROSE, J., in a written judgment, said that in June, 1919, S. Gregoire made a conveyance of all his interest in the land to J. B. Gregoire, but it was admitted that, as against Bourque, J. B. Gregoire stood in no better position than S. Gregoire would have stood in if the transfer had not been made; and the evidence indicated that J. B. Gregoire was in reality a trustee for S. Gregoire.

Bourque agreed to pay \$1,000 and the amount due the Government by way of mortgage and unpaid purchase-money, and to pay to S. Gregoire \$100 down, \$200 on the 1st January, 1920, and \$200 on each 1st day of January thereafter until the \$1,000 was paid, and to pay to the Government all sums due by the vendor. And it was expressly understood that time was to be of the essence of the agreement and that unless the payments were punctually made at the time and in the manner mentioned the agreement should be of no effect and the vendor should be at liberty to resell. The purchaser also agreed "to build a house to the Government requirement and to put under cultivation 5 acres within one year from this date and to do all that is necessary for the vendor to obtain his patent."