defendant "on or before the first day of July." This was as much the fault of defendant as of plaintiff. Had the amount been ascertained, plaintiff covenanted to pay it, and on payment of the amount defendant was bound under his express covenant to convey the property to plaintiff. There was no default. . . .

All the proceedings, therefore, in respect of the proposed sale were wholly nugatory. It was only in the event of there being no bid equal to or greater than $7,700 that plaintiff was entitled to receive credit for $1,700 "upon his indebtedness" to defendant, "computed as aforesaid," and then that he should stand debarred and foreclosed of his equity of redemption. The occasion not having arisen to justify the sale, there could be none, and the provision for foreclosing the equity never came into operation.

With deference, I think the judgment of the trial Judge should be set aside and plaintiff allowed to come in and redeem, with a reference to the Master to take the accounts, making all just allowances for improvements and rebuilding after fire, after allowing for the insurance moneys received. Costs to the plaintiff in the Court below and of this appeal. Further directions and subsequent costs reserved.

MAGEE, J., gave reasons in writing for the same conclusion.

MULOCK, C.J., also concurred.

CARTWRIGHT, MASTER. MAY 30TH, 1907.

CHAMBERS.

COLLINS v. TORONTO, HAMILTON, AND BUFFALO R. W. CO.

PERKINS v. TORONTO, HAMILTON, AND BUFFALO R. W. CO.

Parties — Joinder of Defendants — Cause of Action — Joint Liability—Tort.

Motion in each action by defendants the Dominion Natural Gas Co. for an order requiring plaintiffs to elect against which defendant they would proceed.