tiff in the matter of the settlement and payment of their claim for loss.

One of the defendants, however, says that in view of the large loss they were sustaining in any event, and the large amount of insurance moneys which they were claiming, and which was involved, and which they were seeking to obtain payment of as soon as possible, they made these references. They also point out, however, that the insurance companies were made aware of the situation so far as the plaintiff was concerned, and a special cheque for $558 was issued by the insurance companies payable to the order of the plaintiff and defendants jointly as representing the relative share of the plaintiff in the moneys obtained from the sale of the salvage.

It appears that before he commenced his action the existence of this cheque payable as indicated was made known to the plaintiff. It is said that he declined to accept it. In any event it is not pretended that he intimated that he would accept it, nor did he so indicate at the trial. I suppose that this cheque is still available for him if he will now accept it. The amount thereof approximately represents the plaintiff's share of the salvage.

I think the plaintiff's action must be dismissed with costs.

DIVISIONAL COURT.

JANUARY 3RD, 1913.

GUISE-BAGELEY v. VIGARS-SHEIR LUMBER CO.

4 O. W. N. 559.

Vendor and Purchaser—Specific Performance—Option Contained in Agreement for Lease—Forfeiture of Term—Option Dependent Thereon—Lapse.

Action for specific performance of an agreement to sell certain lands to plaintiff. Defendants agreed to lease the lands in question to plaintiff, "the lease to contain a covenant on the part of the lessors that the lessee may at any time during the said term exercise his right of pre-emption of the said premises" at a fixed price. No formal lease was executed, but plaintiff took possession, and, after remaining in possession for some time, abandoned the property and refused to pay rent. Defendants then leased the property to a third person and plaintiff brought this action.

MCKAY, DIST. CT. J., dismissed action, with costs.

DIVISIONAL COURT, *held*, that plaintiff had forfeited his lease by his conduct, and that the option to purchase was dependent thereon, and was also avoided thereby.

Appeal dismissed, with costs.