

NOVEMBER 3RD, 1903.

DIVISIONAL COURT.

DUPRAT v. DANIEL.

Lease—Action to Set Aside—Improvvidence—Lack of Independent Advice—Lease Executed on Sunday.

Action by plaintiff from judgment of FERGUSON, J. (1 O. W. R. 561) dismissing with costs an action brought by plaintiff to set aside a lease made by her and her deceased brother for their lives and the life of the survivor of them to defendant. Plaintiff and her brother were entitled for their joint lives and the life of the survivor of them to 50 acres of land, and they made a lease to defendant for the term of their ownership, reserving certain rooms in the house for their own use, and defendant agreeing by way of rent to supply them with proper board, doctor's attendance, and the use of a horse and buggy when required. A sum of \$12 per month was to be paid the lessee for the board of Calixte Dupont, the brother. He died a few days after the lease was executed, and plaintiff was his legal representative. The plaintiff alleged that the lease was improvident; that plaintiff in making it had no independent advice; and that it was executed on Sunday. No power of revocation was reserved to the lessors, but there was the usual proviso for re-entry in case the tenant should fail in his duties.

A. B. Aylesworth, K.C., for plaintiff.

M. Wilson, K.C., for defendant.

THE COURT (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) held, upon the evidence, that the conclusion arrived at by the trial Judge upon the questions of improvidence and lack of independent advice should not be interfered with. Also, that there was a parol agreement and part performance of it before the actual execution of the lease, which was on Sunday. But in any event this was not a sale or purchase or a contract for the sale or purchase of real property; it was a lease of real property, and not within the terms of sec. 9 of R. S. O. ch. 246. See *Lai v. Stall*, 6 U. C. R. 506.

Appeal dismissed with costs.