

LATCHFORD, J.

MAY 20TH, 1920.

## CAROM v. KOMER.

*Contract—Formation of—Oral Agreement for Sale and Purchase of Land and for Lease—Small Sum Paid by Purchaser—Written Receipt Embodying Terms so far as Agreed upon—Failure to Agree upon Further Terms—No Concluded Agreement—Registration of Receipt—Judgment Directing Cancellation—Statute of Frauds—Counterclaim for Specific Performance—Dismissal.*

Action for a declaration that the registry of a document should be vacated as a cloud upon the plaintiff's title to land.

Counterclaim for specific performance of an agreement for the sale of the land and for damages.

The action and counterclaim were tried without a jury at Sandwich.

E. S. Wigle, K.C., for the plaintiff.

A. St. G. Ellis, for the defendant.

J. H. Rodd, for George Mantley, made a defendant by counterclaim.

LATCHFORD, J., in a written judgment, said that on the 12th August, 1919, the plaintiff agreed to sell to the defendant his house property in Windsor, for \$9,000, \$2,000 of which was to be paid any time before the 1st September, and the balance in instalments of \$500 each, payable every 6 months, with interest. The defendant paid \$25, and the plaintiff gave her a receipt which embodied the terms stated. The plaintiff affirmed and the defendant denied that it was agreed between them, when the sale was made, that he was to be given a lease of the premises at \$65 a month. About a week afterwards, the parties met in the office of the defendant's solicitors. The plaintiff insisted on having a lease for a term of years signed before he executed a formal contract of sale. The defendant refused to give him a lease for more than one year, and the solicitor told them to go away, and to return only when they had reached an agreement. They were unable to come to terms, and the plaintiff returned to the defendant, and she accepted back the \$25 which she had paid.

Later she registered the receipt against the plaintiff's property. He became aware of this only in January of the present year, and then had a request made that the defendant sign a discharge or release of the registered document. On her refusal, the present action was begun.