

not the action will be dismissed, but the plaintiffs having caused the litigation the defendants must in any case be paid their costs of defence.

HON. MR. JUSTICE BRITTON.

JUNE 18TH, 1914.

COOK v. BARSLEY.

6 O. W. N. 608.

Vendor and Purchaser—Agreement for Sale of Land—Oral Agreement—Possession Taken by Vendee—Payment of Taxes—Statute of Frauds—Part Performance—Agreement Enforced Against Grantee of Vendor with Actual Notice—Trespass—Injunction.

Defendant, wishing to purchase a lot and not being able to pay for it at once, verbally agreed with one H. that the latter should purchase it for him and sell it to him, giving him time to pay for it. H. purchased the lot, defendant entered into possession and performed sufficient acts of part performance to enable him to enforce his agreement with H. H., in violation of his agreement with defendant, sold to plaintiff.

BRITTON, J., *held*, that the plaintiff, being a purchaser for value, with actual knowledge of the agreement, was not entitled to the ownership of the lot, and that he must convey it to defendant upon receipt of the purchase price.

Action for trespass, and a declaration that plaintiff is owner of Park lot 21, in Forman's survey of lot 4 in the 1st concession of Downie, now in the city of Stratford, tried at Stratford without a jury.

R. T. Harding, for plaintiff.

J. J. Coughlin, for defendant.

HON. MR. JUSTICE BRITTON:—This lot of land prior to 4th May, 1908, belonged to one Howard Barker. He desired to sell and defendant desired to purchase. Barker wanted payment in the fall, and defendant had not the money, so the defendant approached the late Thomas Holliday and induced him to purchase the said land from Barker for him, the defendant, and sell to him, giving him time to pay for it, together with interest on the purchase price. Holliday agreed to do this, and, in pursuance of the arrangement paid to Barker \$450 and on the 4th day of May, 1908, obtained a conveyance of said land. The verbal agreement between defendant and Holliday in reference to this land was as is