

plaintiff also paid, to a like amount. The defendant paid more, but need not have defended the action. There should be judgment for the defendant upon his counterclaim for \$2,128.48, interest, and costs. W. A. J. Bell, K.C., for the plaintiff. D. L. McCarthy, K.C., for the defendant.

PILKEY v. PYNE—BRITTON, J.—JUNE 27.

Vendor and Purchaser—Agreement for Sale of Land—Breach by Vendors—Conveyance to another Purchaser—Action by first Purchaser against Vendors and second Purchaser—Specific Performance or Damages—Knowledge of first Purchaser that Title not in Vendors—Possession—Improvements—Compensation—Costs.]—An action for specific performance of an agreement made by the plaintiff with the defendant Effie Pyne for the sale by her and the purchase by the plaintiff of land in the township of Devlin. The action was tried without a jury at Fort Frances. BRITTON, J., in a written judgment, said that before the 10th July, 1912, Alexander Thom was the owner of the land in question. The plaintiff desired to purchase it. Thom died some time before the agreement sought to be enforced; and his widow married Robert Pyne. The agreement was made between the plaintiff, of the one part, and the defendant Robert Pyne and his wife, the defendant Effie Pyne, of the other part. The price was \$600. The plaintiff knew that Thom owned the land; that he died without a will; and that he left two children, both minors. An application was made to the Court to sanction, on behalf of the infants, the sale to the plaintiff, at \$600, and the application was granted. But, before the sale was completed, the defendant Ganton offered \$1,200 for the land; a sale to him was approved by the Court and completed, the land being conveyed to Ganton. The plaintiff, at the trial, conceded that the action for specific performance could not be maintained, but contended that the plaintiff should, in the alternative, have damages from the defendant Robert Pyne for non-performance of his part of the contract. Effie Pyne was made a defendant, not in her own right, but as administratrix of the estate of Thom. The plaintiff went into possession and made improvements. But he could not, in the face of his knowledge of the circumstances, recover damages from Robert Pyne. The plaintiff failed, and perhaps his improvements might be in some measure compensated if no costs were given against him. Judgment dismissing the action as against the defendant Ganton with costs; and as against the defendants the Pynes with costs. C. R. Fitch, for the plaintiff. A. G. Murray, for the defendants.