

APRIL 10TH, 1909.

C. A.

THOMPSON v. SKILL.

Vendor and Purchaser—Contract for Sale of Land—Option—Consideration—Seal — Extension — Notice—Continuing Offer—Acceptance—Specific Performance.

Appeal by the plaintiff from order of a Divisional Court, 12 O. W. R. 1033, affirming the judgment at the trial of TEETZEL, J., who dismissed the action without costs.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, J.J.A., and MAGEE, J.

J. B. Clarke, K.C., C. Millar, and J. M. Ferguson, for plaintiff.

J. W. Mitchell, for defendant Skill.

N. B. Gash, K.C., for defendant Sears.

MOSS, C.J.O.:—Many difficulties in the way of the plaintiff's case were pointed out by Mr. Mitchell in the course of his able argument for the respondent Skill.

But it does not seem necessary to deal with them all, for the initial difficulty, viz., that the option to purchase, on which the plaintiff relies, was terminable at any time, or, if not, that it was in any case limited to 14th September, 1907, and was not accepted or its conditions complied with on that day, and thereupon it came to an end, is fatal to the action.

If the memorandum of agreement of 20th August, 1907, is to be considered as a simple writing not under seal, the fullest effect that can be given to it is as an evidence of an option to the plaintiff to become the purchaser of the land in question for \$8,000, provided that he pay that sum in cash on or before 14th September, 1907, with a distinct stipulation that, in case he fail to pay the \$8,000 on or before that date, the agreement becomes absolutely void, and neither party is to have any claim upon the other by reason of it.

Now, although 14th September, 1907, was named as the day for completion, the plaintiff was not bound at all until