

DIVISIONAL COURT.

DECEMBER 12TH, 1910.

*DEVLIN v. RADKEY.

Vendor and Purchaser—Contract for Sale of Land—Possession Taken by Purchaser—Vendor without Patent for Land—Purchaser Failing to make Payments—Time Clause in Contract—Waiver—Judgment—Setting aside—Balance of Purchase-money Paid into Court—Vendor Treating Contract as Subsisting—Right of Purchaser to Redeem—Improvements Made by Purchaser—Costs.

Appeal by the defendant Rowe from the judgment of RIDDELL, J., 1 O.W.N. 988.

The appeal was heard by MULLOCK, C.J.Ex.D., CLUTE and SUTHERLAND, JJ.

G. H. Kilmer, K.C., for the appellant.
J. McCurry, for the plaintiff.

The judgment of the Court was delivered by CLUTE, J.:—
The plaintiff, as locatee of the Crown lands in question, entered into an agreement for the sale of the same for \$600 to the defendants Radkey and Rowe, and it was “expressly understood that time was to be considered the essence of this agreement, and, unless payments are punctually made at the time and in the manner above mentioned, the said party of the first part is to be at liberty to resell the said lands.”

Radkey transferred his interest to Rowe, and has now no further interest therein.

After the execution of the agreement, Rowe entered into possession and occupation of the lands and premises, and has been in possession and occupation thereof continuously ever since, except when, for a few days, he was dispossessed by the Sheriff. He has paid from time to time \$320 on account of principal and interest.

Rowe, at the time the contract was entered into, believed that the plaintiff had obtained a patent for the land and that she intended to sell him and his co-purchaser the fee simple.

In March, 1907, Rowe made permanent improvements to the amount of \$300 in buildings and \$40 in clearing the land.

*This case will be reported in the Ontario Law Reports.