

HIGH COURT DIVISION.

BRITTON, J.

MAY 29TH, 1918.

WALT v. WRIGHT.

Contract—Agreement for Use of Chattels—Lease—Option of Purchase—Construction of Agreement—Rent of Chattels—Right to Return of Chattels—Damages—Injunction—Costs.

Action to recover possession of certain dental goods and equipment, pursuant to an agreement between the parties, dated the 2nd December, 1915.

The action was tried without a jury at Belleville.

W. D. M. Shorey, for the plaintiff.

W. C. Mikel, K.C., and D. E. K. Stewart, for the defendant.

BRITTON, J., in a written judgment, said that the plaintiff was a dental surgeon practising his profession in the village of Stirling, and the defendant, a dental surgeon, practising in the town of Trenton. In 1915, the plaintiff enlisted in the Canadian Army Dental Corps, and went overseas early in 1916. Preparatory to going and in view of the possibility of not returning, or of returning in a condition unfit for the practice of his profession, the plaintiff desired to make an arrangement in reference to his business so that it would be continued as a going concern; and, pursuant to that, he entered into an agreement with the defendant. The agreement made it clear that the plaintiff did not desire to sell out the business, but to keep it as a going concern until his return from overseas or until he should be disabled. By the agreement, the defendant, called "the lessee," agreed to pay \$25 a month for the use of the "articles and equipment of a dentist." By the 4th paragraph, the parties agreed that "upon the payment of \$1,000, either by rent or cash, during the term of this agreement and lease," the said equipment "shall become the property of the said lessee and he shall have the right to remove or dispose of said equipment without the permission of the said lessor" (the plaintiff).

The learned Judge was of the opinion that the true meaning of the agreement was, and that the intention of the parties was, that the acquiring of the property meant only acquiring it under the terms otherwise provided in the agreement. This meant an acquiring when the lessor or his representatives desired to sell.