

Reference to *In re Alison, Johnson v. Mounsey* (1879), 11 Ch.D. 284. The right of a mortgagee in possession to sell the mortgaged property after the statutory period had expired was recognised in that case in both Courts.

There was no outstanding right in the mortgagor or his representatives, and the objections of the purchaser failed. The vendor was able to make a good title.

The purchaser was not an unwilling purchaser; he had acted in good faith, and raised questions as to which there might reasonably be differences of opinion; and so each party should bear his own costs.

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ROSE, J.

JUNE 6TH, 1919.

### TINNEY v. WRIGHT.

*Vendor and Purchaser—Agreement for Sale of Land—Action by Purchaser to Compel Specific Performance—Defences—Statute of Frauds—Memorandum in Writing—Authority of Agent—Effect of Subsequent Sale by Vendor to Another—Second Purchaser in Possession without Conveyance—Judgment for Specific Performance.*

A purchaser's action for specific performance.

The action was tried without a jury at Guelph.  
C. L. Dunbar and L. M. Goetz, for the plaintiff.  
George Bray, for the defendant.

ROSE, J., in a written judgment, said that two defences were raised by the pleadings: (1) that there was no sufficient memorandum in writing; (2) that one Lasby, who signed the document which was relied upon as a memorandum of the bargain, was not the vendor's agent. Upon both of these issues the learned Judge found against the defendant, and reserved judgment only for the purpose of considering what, if any, effect ought to be given to the fact that, after the contract had been made between the plaintiff and the defendant, the defendant sold the land to one Boys, who paid part of his purchase-price and entered into possession, but did not receive a deed.

Boys was not a party, and, therefore, although he was called as a witness at the trial, the learned Judge was not in a position to determine whether Boys had acquired any right to possession