

FIRST DIVISIONAL COURT.

DECEMBER 6TH, 1918.

MANN v. GRAY.

Vendor and Purchaser—Agreement for Sale of Land—Purchase-money Payable by Instalments—Title to be Made after Deferred Payments Completed—Default by Purchaser—Possession Resumed by Vendor—Intention to Terminate Agreement not Shewn—Action by Purchaser to Recover Part of Purchase-money Paid—Counterclaim for Specific Performance—Claim for Conversion — Judgment — Account — Deductions — Damages — Interest — Appeal — Costs.

By agreement under seal, dated the 25th April, 1915, the defendant Margaret Gray agreed to sell and Alexander Mann to purchase a farm in the township of Paipoonge for \$3,400, payable \$1,000 in cash, \$1,400 at the end of a year, and \$1,000 in 5 consecutive yearly payments of \$200 each, together with interest. Alexander Mann was, as expressed in the agreement, acting as trustee for himself, his two brothers and his sister. The agreement provided that the purchaser should pay the taxes, and that before the final payment the vendor should shew a clear and unincumbered title. It was also stipulated that the purchaser might occupy the land until default in payment; that time was to be of the essence of the agreement; and that, unless the payments were punctually made, the agreement should be null and void, and the vendor at liberty to resell. The purchaser paid \$1,000 and went into possession. Subsequently he and one of his brothers went overseas, leaving their father, the plaintiff, and his son John, in possession, and they remained in possession until the 11th May, 1917, when the vendor wrote the father (the plaintiff) a letter, in which she demanded from him, as agent for his children, the interest and taxes to the 21st April, 1917, adding that she was "willing to hold the place until the boys return and to assume the interest and taxes from date of possession." On the date of the letter, the vendor, through her husband, entered into possession. The plaintiff did not re-enter, and nothing more was done until the return from overseas of Alexander Mann's brother—Alexander himself having been killed.

When he made the agreement, Alexander Mann knew that there was a mortgage upon the land and that some of the taxes had not been paid. Before the vendor, in May, 1917, repossessed, both the mortgagee and the municipality had taken proceedings to realise the arrears of taxes and the mortgage-moneys. The mortgage sale proceedings were abortive, and the tax sale proceedings terminated by redemption.