

SUTHERLAND, J.:—The application is made with reference to a written agreement dated the 6th May, 1908, concerning the sale of certain mining properties in the Sudbury district, for the sum of \$250,000.

The agreement provided for the payment in cash of the sum of \$12,500, which was duly paid. Further payments were to be made under its terms as follows: 6th May, 1909, \$37,500; 6th November, 1909, \$50,000; 6th May, 1910, \$50,000; 6th November, 1910, \$50,000; 6th May, 1911, \$50,000.

On the 21st August, 1909, the plaintiffs commenced this action, and asked for a declaration that the option given by the plaintiff Leckie to the defendant Marshall by the said agreement had expired, that the defendants were no longer entitled to the benefits of the said agreement, etc.

The action was tried before the late Mr. Justice MacMahon, and judgment delivered by him on the 26th November, 1909. This judgment (see 1 O.W.N. 222) declares that the contract in question is a valid and subsisting contract and that the defendants are entitled to have it specifically performed by the plaintiffs and carried into execution in case the plaintiffs can make a good title to the properties therein described. The judgment also directs that it be referred to the Master in Ordinary to inquire and state whether a good title can be made by the plaintiffs to the said properties, and, if so, to take an account of the purchase-money, etc.

Clause 5 of the said judgment is as follows: "And this Court doth further order and adjudge that the defendants William Marshall and Grey's Siding Development Limited do pay into Court to the credit of this action on or before the 5th day of January, 1910, to abide the further order of this Court, the instalment of \$37,500 in the said counterclaim mentioned and any interest earned thereon since the 5th day of July, 1909, up to the date of such payment into Court."

From that judgment the plaintiffs appealed, first to the Court of Appeal for Ontario (see 1 O.W.N. 899), and later to the Privy Council.

In the order of His Majesty in his Privy Council dated the 25th May, 1911, this provision is found: "And their Lordships do further report that liberty ought to be reserved to the appellants to apply to the said Court of Appeal with reference to the payment of the purchase-money due under the said agreement."

In pursuance of the leave thus given, an application was made to the Court of Appeal for Ontario, and by its order dated the 5th July, 1911, it was ordered "that the matter referred to in