

the above provision by other covenants, there were provisions for two other modes of cancellation in case of default, one by service of a notice personally on the purchaser of intention to exercise the power of cancellation after one month, to be followed at the end of the month by a notice similarly served declaring the cancellation to be complete and effective, and the other by notice, after the default had continued for three months, declaring the contract null and void, addressed to the purchaser deposited in the post office at . . . and directed to the post office at . . .

*Held*, that, upon plaintiff making default, the defendant had a right to select any one of the three modes of cancellation provided for, and that a notice pursuant to that first above quoted, personally served upon the defendant, was valid and effectual as a cancellation of the agreement, subject to the power of the court to give equitable relief if the circumstances should warrant it. *Canadian Fairbanks v Johnston*, 18 M.R. at 601. referred to.

The defendant having, in his statement of defence, submitted to redemption by the plaintiff, upon payment of the arrears and certain expenses, judgment was given accordingly, allowing the plaintiff two months after the Master's report to pay the amount found due by him and costs, and in default that the agreement should be cancelled.

*Cooper*, K.C., and *Meighen*, for plaintiff. *Fullerton* and *F. G. Taylor*, for defendant.

Robson, J.]

|Oct. 19.

DART v. ROGERS.

*Vendor and purchaser—Specific performance—Misrepresentations by purchaser inducing sale—Materiality of.*

*Held*, 1. A decree for specific performance of an agreement of sale will not be refused because of any misrepresentations by the purchaser, unless they are material, that is, relate to some part of the contract or its subject-matter, and a buyer is not liable to an action of deceit for misrepresenting the seller's chance of sale or the probability of his getting a better price for his property than the buyer offers. *Archer v. Stone*, 78 L.T. 34, and *Vernon v. Keyes*, 12 East 632, 4 Taunt. 488. followed.

2. Applying this principle, statements made by the plaintiff to the defendants, during negotiations for the purchase of the