

randum, by which he agreed to pay ten per cent. of the price down, and the balance on delivery of the deed. The auctioneer's receipt for the ten per cent. so paid stated that the sale was on the understanding that a good title in fee simple, clear of all encumbrances up to the first of the ensuing month, was to be given to W. After the date so specified, W., not having been tendered a deed which he would accept, caused the vendor to be notified that he considered the sale off and demanded repayment of his deposit, in reply to which the vendor wrote that all the auctioneer had been instructed to sell was an equity of redemption in the property; that W. was aware that there was a mortgage on it, and had made arrangements to assume it; that a deed of the equity of redemption had been tendered to W., and that he was required to complete his purchase. In an action against the vendor and auctioneer for recovery of the amount deposited by W.,

Held, reversing the decision of the Supreme Court of Nova Scotia (26 N. S. Rep. 472), that the vendor had repudiated the agreement evidenced by the memorandum signed by W. and the said receipt, and that W., being entitled to a title in fee clear of encumbrances, was not bound to accept the equity of redemption, but could consider the contract determined and recover his deposit.

Appeal allowed with costs.

Harris, Q.C., for appellant.

Borden, Q.C., for respondents.

11 March, 1895.

Nova Scotia.]

MURDOCH v. WEST.

*Contract—Specific performance—Agreement to perform services—
Relationship of parties.*

M., on his father's death, at the age of three years, went to live with his grandfather, W., who sent him to school until he was sixteen years old, and then took him into his store, where he continued as the sole clerk for eight or nine years, when W. died, and M. died a few days later. Both having died intestate, the administratrix of M.'s estate brought an action against the representatives of W. for the value of such services rendered by M., and on the trial there was evidence of statements made by W. during the time of such service, to the effect that if he (W.)