

tion of its not then being carried out; but, when that time arrived, the defendant's solicitor refused to complete it.

My view is, that the contract is enforceable and that it should be enforced; but, as the purchaser, both on the day on which the deed was tendered and before that date and also at the close of the trial, offered to make the term of the mortgage three years, that, instead of five years, will be its term if the defendant now so desires it.

Judgment will be that the contract be so enforced, with costs payable by the defendant.

If any question arise as to the adjustment or settling the details, it can be referred to the Master in Ordinary; the costs of any such reference being reserved until after the Master has made his report.

FALCONBRIDGE, C.J.K.B.

JANUARY 28TH, 1913.

SNELL v. BRICKLES.

Vendor and Purchaser—Contract for Sale of Land—Time of Essence of Contract—Failure of Purchaser to Close in Time—Duty of Vendor as to Tender of Conveyance—Construction of Contract—Specific Performance—Death of Plaintiff between Hearing and Judgment—Entry of Judgment as of Date of Hearing—Practice.

An action for specific performance of a contract for the sale of land by the defendant to the plaintiff.

The action was tried before FALCONBRIDGE, C.J.K.B., without a jury, at Toronto, on the 26th November, 1912.

W. Proudfoot, K.C., for the plaintiff.

J. E. Jones, for the defendant.

FALCONBRIDGE, C.J.:—I am informed that since the argument in this case the defendant has departed this life. I have not yet been notified of probate of will or order of revivor; but it appears that in such a case no order to continue proceedings is necessary to enable the Court to give judgment, and the judgment may be pronounced and entered as of the date on which the argument took place: Con. Rule 394; notes in Holmsted and Langton's Jud. Act, 3rd ed. p. 603, and cases there cited.