

For these reasons, we are unanimously of opinion that the judgment should be confirmed, with costs.

We, however, are not prepared to concur in the first considérant of the judgment *a quo*, and we have replaced it by two considérants.

Mr. Justice Archibald, Acting Chief Justice. The plaintiff seemed to contend that the defendants were obliged to pay this sum of money, \$3,000, on the 1st of January, whether the deeds were perfect or not; and it was only after that, when it came to be a question of passing the titles, that he could be obliged to justify his warranty that he had good titles and that the property was free and clear from all hypothecs.

That appears to me wholly untenable. The promise of sale accepted by the defendant, the property delivered to the defendant and in his possession, was equivalent to a sale, only with stipulation that the deed should not be passed until the second payment of \$3,000 was made, when it was stipulated it should be passed. This second payment was a condition precedent to the passing of the deed, but the passing of the deed became simultaneously obligatory upon the plaintiff, and upon the defendants to pay the money. The money was the completion of the amount necessary to justify the defendants in demanding their deed, and, of course, at the same time, demanding that the plaintiff should fulfil his obligation to justify his warranty that what he sold, he was able to deliver. These obligations were contemporaneous, neither one was before the other. Clearly the defendants had the right on that occasion to demand their titles contemporaneously with paying the money, and the money was already in the notary's hands to be paid as soon as the plaintiff's obliga-