Per RICHARDS AND PERDUE, JJ.A.:—1. The court will not force a purchaser to take an equitable estate except where the vendor has the whole equity in the land and controls the legal estate in such a way that he can readily procure it, and the defendants had not, either at the time the contract was made or at the trial, such a title as the plaintiff was compellable to accept: *Craddock* v. *Piper*, 14 Sim. 310; *Esdaile* v. *Stephenson*, 6 Mad. 366; *Madeley* v. *Booth*, 2 De. G. & Sm. 718: Fry on Specific Performance, 4th ed., p. 586.

2. The defendants were too late in procuring the release of the reservations after the commencement of the suit, though it might be otherwise in an action for specific performance: Dart, 1005. The reservation in favour of the G. T. P. Ry. Co. was a fatal objection to the title, as it had not been, and could not be, removed.

3. The position taken by defendants in their statement of defence, setting up the various contracts under which they held, was a repudiation of their contract to furnish a title in fee simple, and an attempt to set up that the plaintiff had only bought the equitable interest they had in the land, which entitled the purchaser at once to treat the contract as rescinded: *Wrayton* v. *Naylor*, 24 S.C.R. 295.

4. The bringing of the suit for the return of the money paid, alleging that the vendor had not a good title, was a sufficient repudiation of the contract on the part of the plaintiff, and it was not necessary for him to give notice of rescission or demand the repayment of the money before commencing suit: *Want* v. *Allibras*, L.R. 8 Ex. 175. Neither was it necessary for the plaintiff to demand an abstract of title, as Wishard shewed the plaintiff the nature of the company's title before the action.

5. Although in Ontario the court may allow money to be paid into court to secure the purchaser against an outstanding incumbrance, as in *Cameron* v. *Carter*, 9 O.R. 426, that course is permissible under the Act respecting the Law and Transfer of Property, R.S.O. 1897, c. 119, s. 15, and there is no similar statutory provision in Manitoba.

6. So far as the question of pleading was concerned, the statement of claim was quite sufficient, for the plaintiff was entitled to join two grounds of relief as he had done and to rely upon either or both of them. The appeal should be allowed and relief given to the plaintiff as claimed.

The court being equally divided, the appeal was dismissed without costs.

Galt, for plaintiff. *Anderson* and *Moran*, for defendants.