

KING'S BENCH.

Mathers, J.]

[Dec. 21, 1908.]

BRANDON STEAM LAUNDRY CO. v. HANNA.

Specific performance—Agreement for sale of land—Vendors and purchasers—Incumbrances.

Action for specific performance of an agreement in writing by the defendant to purchase the property in question for \$40,000, "payable as follows: \$10,000 cash, and six equal notes with interest at seven per cent. for balance, to be handed over for such time payments." At the time of signing the agreement, the defendant paid \$500 as a deposit on account. There were incumbrances on the property aggregating over \$8,000, part of which was overdue, but the greater part was to mature at various dates in the future within four years. The agreement did not state for what time the notes were to run, but the parties understood that they were to be for six equal yearly payments, the first in one year and the last in six years, also that a transfer and bill of sale were to be given at once and a mortgage taken for the deferred payments, although the document was silent on these points.

Held, that the time for completion of the purchase was when the \$10,000 should be paid, and that as the plaintiffs were unable or unwilling to clear off the incumbrances and insisted that the defendant should take the property subject to the incumbrances, the latter had a right to rescind the contract as he had done and the plaintiffs were not entitled to specific performance, also, that the defendant was entitled to recover on his counterclaim for the deposit he had paid. *In re Weston & Thomas* (1907) 1 Ch. 244 followed.

It is not necessary that a vendor should have the right immediately to give a clear title, if it appears that at the time he will be called on to convey he will be able to compel a clear title: *Williams*, 132; *Dart*, 320.

Noble v. Edwards, 5 Ch.D. 378; *Bellamy v. Debenham* (1891) 1 Ch. 412; *Cameron v. Carter*, 9 O.R. 431, discussed and explained.

The plaintiffs themselves treated the transaction as one to be completed at once by bringing their action as one for specific performance of the whole agreement. If the contract was not to be completed until after six years, they would have no right to