

stock of the Orr company held under the agreement of September, for \$10,000, the amount which would pay off the creditors of the Kirkland company and the expenses of liquidation.

This arrangement was undoubtedly made in good faith and as an endeavour on the part of the defendant and Wills, who had most at stake, to try and save something from the wreck. The learned Judge did not think that what was done amounted in any sense to a breach of any implied contract or undertaking on the part of the defendant; and, even if it did, the plaintiff was in no way damnified thereby.

By his bargain the plaintiff was to be entitled to receive commission only as and when the Kirkland company paid the balance of the purchase-money. That company never paid and never was in a position to pay. Had the defendant rescinded the contract by reason of default or by proceedings in the nature of foreclosure, the plaintiff would be entitled to no commission. The defendant was ready to pay the commission if the property was taken off his hands by the purchaser at the price stipulated, but he was not to be liable to pay commission unless the sale was carried out. The sale was not carried out in any sense of the term, and the defendant was now in possession of the property unsold, and again seeking a purchaser. This was not technically what had taken place, but any distinction between this statement and the actual transaction as between the defendant and Wills told against the plaintiff's contention.

Action dismissed with costs.

MIDDLETON, J.

DECEMBER 3RD, 1920.

*FERRIS v. ELLIS.

Vendor and Purchaser—Agreement for Sale of Land—Objection to Title—Milling Property—Preservation of Dam—Maintenance of Fishing Privileges—Bond—Obligation Personal to Covenantor and not Running with Land—"Assigns," Omission of, after "Heirs, Executors, and Administrators"—Grant of Fishing Privileges to Third Person—Compensation—Specific Performance with Abatement in Price—Judgement not Binding on Third Person—Rule 602—Judgment Stayed to Allow Motion to be Made upon Originating Notice for Order Binding on Third Person—Costs.

Action by a vendor of land for specific performance of the purchaser's agreement to take and pay for the land.