

have agreed that any action brought in respect of the cause of action sued upon shall be tried in another forum.

Appeal dismissed.

Davis, Q.C., and *Cowan*, for the appeal. *Wilson*, Q.C., and *Reid*, for respondents.

Martin, J.]

TOWNEND v. GRAHAM.

[April 13.]

Purchase by instalments—Investigation of title during term of credit—Lis pendens—Cloud on title.

Action (tried at Nelson) to rescind an agreement for sale, dated July 18th, 1898, whereby the plaintiff agreed to sell and the defendant to purchase certain brewing premises in Grand Forks for \$1,400, of which \$300 were paid on execution, and the balance arranged to be paid in subsequent monthly instalments of \$100 each. The agreement provided that on the defendant's paying the instalments in the time and manner mentioned, the plaintiff would convey or cause to be conveyed to the defendant, by a good and sufficient deed in fee simple, with the usual covenants of warranty and freed and discharged from all incumbrances, the said premises. At the time of the execution of the said agreement and of the refusal to pay the said instalment a *lis pendens* was registered against the property. On the ground that the vendor could not shew a good title, the purchaser (the defendant) refused to pay the first instalment which became due on the 18th of August, 1898, though otherwise ready and willing to do so, whereupon the action was commenced.

Held, that on a purchase of land, the balance of the purchase price for which is payable by instalments, the purchaser may require his vendor to shew a good title before parting with the first instalment.

A *lis pendens* registered against real estate is a cloud upon the title, and, as such, a person is entitled to have it removed from the Registry.

The mere fact that the purchaser made some improvements on the property does not constitute a waiver of his right of an inquiry as to title.

Bowes and *Wragge*, for plaintiff. *W. A. Macdonald*, Q.C., for defendant.