

part of the vendors, the purchase money should not be paid (by the day named), it should bear interest at 5 per cent." The vendors made a careless but *bona fide* mistake as to the origin of their title, and delivered a defective abstract. The date fixed for completion was June 24th, 1892, but partly owing to the above mistake the title was not finally accepted until September 29th; but the purchaser did not, in fact, complete until seven months afterwards, being unable sooner to raise the purchase money. He paid interest from September 29th until completion, and claimed to be relieved from the interest from June 24th to September 29th, on the ground of the "wilful default" of the vendors in having omitted to verify their title by proper investigation before selling. But the Court of Appeal (Lindley, Lopes, and Kay, L.JJ.), Kay, L.J., dissenting, were of opinion that the vendors had not been guilty of wilful default within the meaning of the condition. But the whole court were agreed on the facts that even assuming there had been such "wilful default" on the part of the vendor the non-completion on June 24th was really attributable to the purchaser's own voluntary delay in investigating the title and making requisitions, and his inability to find his purchase money, and therefore he was liable for interest from June 24th. The decision of Chitty, J., was therefore affirmed.

PRACTICE—MOTION FOR INJUNCTION BY DEFENDANT.

*Carter v. Fey*, (1894) 2 Ch. 541; 7 R. Aug. 132, settles a nice point of practice. The Court of Appeal (Lindley, Lopes, and Davey, L.JJ.), agreeing with Kekewich, J., that a defendant who has not filed a counterclaim cannot obtain an injunction against the plaintiff unless the relief sought by the injunction is incident to, or arise out of, the relief sought by the plaintiff; and that if a defendant desires any other relief before the time arrives for the delivery of a counterclaim he can only obtain it by a cross action. In this case the plaintiff claimed an injunction restraining the defendant from carrying on a certain business. The defendant, without filing a counterclaim, moved for an injunction to restrain the plaintiff from using the defendant's name on wagons, sign boards, etc., and the motion was refused, although both the plaintiff's and defendant's motions were based on covenants contained in the same deed.