

the purchaser against the encumbrance, and a sum of £500 by way of liquidated damages for non-performance by either was to be paid to the other. The court held that this did not enable either party to repudiate the contract upon paying to the other £500, and in a suit by the vendor a reference as to title was directed, but without the usual declarations that the plaintiff was entitled to specific performance, reserving a right on the hearing on further directions to refuse specific performance in the event of the vendor's failing to effect, or endeavouring to effect an arrangement with the mortgagee, which the vendor alleged he could make. It was also held that the fact of the vendor being a partner in a mercantile firm who since the execution of the contract had made a composition with their creditors was not such an objection as could prevail against the claim to specific performance.

Kilmer v. B. C. Orchard Lands Co., 10 D.L.R. 172, [1913] A.C. 319, was an appeal to the Privy Council from the British Columbia Court of Appeal. (2 D.L.R. 306.)

The question on the appeal arose out of a claim by the respondent company—an unpaid vendor of a tract of undeveloped land in British Columbia—to enforce a condition of forfeiture contained in the agreement for sale. By the terms of the agreement, the purchase-money was to be paid together with interest, by specific instalments at certain specified dates. Time was declared to be of the essence of the agreement. In default of punctual payment at an appointed date of the instalment of purchase-money and the interest then payable or any part thereof, the agreement was to be null and void and all payments made under the agreement were to be absolutely forfeited to the vendor; and the vendor was to be at liberty to sell the property immediately. The first instalment of \$2,000 was duly paid on the execution of the agreement. The second instalment of \$5,000 with interest as provided by the agreement was not paid on the day fixed for payment. The Privy Council held that the case was entirely within the ruling in the *Dagenham Dock* case (*supra*) and that the court should relieve against the strict letter of the contract, the arrears having been paid into court in the vendor's action brought shortly after the default for the enforcement of the forfeiture, particularly as the strict wording of the agreement would involve the right to confiscate sums of money increasing from time to time as the agreement approached completion, in case of default occurring upon subsequent instalments.

Massey v. Walker (1913), 11 D.L.R. 278, was a decision of the Court of King's Bench, Manitoba. The facts were as follows: The plaintiffs purchased from the defendant under an agreement of sale, the lands and premises therein described for the sum of \$2,700 and made a payment of \$100, being the first cash payment referred to in the said agreement, and entered into possession of the lands. The plaintiffs made default in payment of the principal and interest falling due under said agreement and by reason of the non-observance of the covenants, etc., the whole of the moneys secured by the agreement became due and payable. The court distinguished this case from *B. C. Orchard v. Kilmer*, 10 D.L.R. 172, in that in this case there was an express stipulation between the parties, providing and agreeing to a means by which the agreement might be put an end to. There was not an auto-