

and use of the property. It was further provided that if at any time before payment in full of the price the vendee should fail in the performance of the agreements on his part to be kept, etc., the vendor should be entitled to the immediate possession, and if the rent due or to become due under the agreement was not paid within thirty days all rights of the vendee should cease, and any money paid by him on account of the purchase should be retained by the vendor. The vendee failed to make any of the payments as required.

*Held* (per GRAHAM, E. J., WEATHERBE, J., concurring), that the provision in the agreement enabling the vendor to retake possession in default of payment was cumulative, and that the vendor not having done any act towards making an election that he would forfeit the agreement to pay, and take possession of the instrument, was entitled to the ordinary remedy on breach of the agreement to pay.

Per RITCHIE, J., MEAGHER, J., concurring. The agreement being one for the conditional sale of the organ, and no property passing until all the instalments had been paid, and the agreement providing that in the event of non-performance by the vendee of the conditions of sale, the payments made by him should be forfeited, and that the vendor could retake possession, the latter was the only remedy open to the vendor, and that he could not sue under it for non-payment of instalments.

*D. McNeil, and W. F. O'Connor, for appellant. F. F. Mathers, for respondent.*

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Province of British Columbia.

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SUPREME COURT.

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Full Court.]

BULLOCK *v.* COLLINS.

[Jan. 17

*Examination of judgment debtor—Incurring debt by fraud—*

*R.S.B.C. 1897, c. 10, ss. 15, 16, 19.*

Appeal from an order of DRAKE, J., committing defendant to goal for nine months.

Defendant received from plaintiff several sums of money, part of which were to be invested and part expended on plaintiff's farm. Defendant placed these moneys to his wife's credit, made no investment, kept no accounts, and could not account at all for a large portion although he said it had been expended on the farm. Before plaintiff got judgment, and while the action was pending, defendant allowed his wife and sister-in-law to get judgments against him.

*Held*, by the full court, reversing DRAKE, J., that the defendant had