

may be specially indorsed; but the claim of a vendor is really and truly something different, and in substance is in fact a claim for specific performance of a kind of contract to which the law attaches some particular features not common to other kinds of contract. Every contract of this kind is subject to an express or implied condition that the vendor is able and willing to show a good title to the land sold, the degree of goodness of the title depending on the terms of the contract. If, therefore, the vendor seeks specific performance by the purchaser he must be in a position himself specifically to perform the contract on his part: and it would seem that he cannot escape this liability by treating his claim as a mere money demand of which he is entitled to enforce payment irrespective of his ability to perform this contract on his part. In the case in question, the purchaser set up that he had claims against the plaintiffs for "shortages and deficiencies and for charges against the property conveyed which he had to pay, and also because of defect in title." These are all claims which, in an action for specific performance, the Court would rightly and properly investigate before decreasing the payment of the purchase money, as matters forming proper deductions therefrom, if allowed: but in the case in hand, the claim was treated as if it were a mere money demand properly the subject of a special endorsement and the alleged claims of the purchaser as merely the subject of a counterclaim. But if this is a correct view of the matter, which we venture respectfully to doubt, the question naturally arises what is the meaning of the clause we find on page 120 of the Rules under the heading of "*Claims to equitable relief*," viz: "The plaintiff's claim is for specific performance of an agreement dated the . . . day of . . . for the sale by the plaintiff to the defendant of certain freehold hereditaments at . . ." This seems to have no meaning if the vendor of land may simply sue for so much money.

We are inclined to think the endorsement in the case in question (having regard to the facts disclosed) was wholly irregular and unwarranted by the practice and did not warrant the Court in pronouncing a summary judgment.

The question of the measure of damages in actions on contracts for the sale of land is discussed quite recently in the English Law