

ROSE, J.

JANUARY 4TH, 1919.

JERMY v. HODSON.

*Vendor and Purchaser—Agreement for Sale of Land—Construction—
Legal Title not in Vendor—Time for Making Conveyance—
“All Reasonable Diligence to Obtain Title”—Action for Return
of Purchase-money—Absence of Notice to Convey within Certain
Time—Vendor not in Default.*

Action for the return of money paid by the plaintiff as the price of land in Alberta.

The action was tried without a jury at London.

G. S. Gibbons, for the plaintiff.

L. Macaulay, for the defendant.

ROSE, J., in a written judgment, said, after stating the facts, that upon the contract between the parties it seemed plain that, while the plaintiff was bound to make his payments within a limited time, the defendant's obligation was, not to be ready to convey to the plaintiff the moment the purchase-price was paid and the contract surrendered, but to use all reasonable diligence to "obtain title"—i.e., to procure transfers, for the defendant already had the equitable title under the contract with his vendors—as soon as possible after the money was paid; and, unless the defendant failed to use that reasonable diligence, there was no breach of contract upon his part. It ought not to be found as a fact that he failed to use all due diligence; and, even if he was not quite as diligent as he ought to have been, there was no such inaction upon his part as indicated such a repudiation of his obligations as justified the plaintiff in treating the contract as at an end and demanding a return of the purchase-price. It seemed to be quite clear that the plaintiff did not, at any stage, take effective steps to make delivery of the conveyances within a certain time a term of the contract.

The learned Judge's conclusion was, that, before the commencement of this action, there had been no such breach by the defendant, either of a term of the contract as written or of a condition as to time, added by notice given by the plaintiff, as to justify the plaintiff in declaring the contract at an end and demanding the return of his money.

Reference to Gregory v. Ferrier (1910), 3 Sask. L.R. 191.

Action dismissed with costs.