contract, and that this default was conclusive evidence that defendants were unable or unwilling to make payment, and in either case that plaintiff was justified in assuming that defendants did not intend plaintiff or themselves to be bound by the contract.

J. A. Ritchie, Ottawa, for defendants.

W. A. D. Lees, Ottawa, for plaintiff.

LOUNT, J.:—The question raised is whether, if one party breaks a contract, the other is bound to perform his part of it. See Furth v. Barr, 9 C. P. at p. 213 per Lord Coleridge, and Keating, J., at p. 214. With all respect, I think the learned Judge erred in law as well as in his finding on the facts. It is not sufficient that the defendants were unable to pay or wished to delay payment. It must be found that there was an intention to abandon by defendants and a refusal to perform, or, as Keating, J., put it, there must be "an absolute refusal to perform their part of the contract." In my opinion the evidence falls short of this. . . . Refer to Mersey Steel and Iron Co. v. Naylor, 9 Q. B. D. 648, and 9 App. Cas. 434.

Judgment for plaintiff for $100.10, with costs of action, except costs of counterclaim, and for defendants for costs of counterclaim. Costs of appeal to defendants.

Lees & Kehoe, Ottawa, solicitors for plaintiff.

Belcourt & Ritchie, Ottawa, solicitors for defendants.

FEBRUARY 20TH, 1902.

WEEKLY COURT.

Re CAMPBELL AND HORWOOD.

Will—Construction—Power to Sell—Executors—Real Estate Undisposed of—Intestacy—Vendor and Purchaser—Doubtful Title.

Alexander v. Mills, L. R. 6 Ch. at p. 131, followed.

Motion under Vendors and Purchasers' Act for an order declaring that the title of the vendor to lot No. 6 on the north side of McLeod street in the city of Ottawa is one which the purchaser is bound to accept. The vendor derives title by conveyance from the sole acting executor of Colin Campbell, deceased.

M. J. Gorman, Ottawa, for vendor.

D. L. McLean, Ottawa, for purchaser.

LOUNT, J.:—By a deed of the 9th April, 1900, G. D. Campbell, sole acting executor of estate of Colin Campbell, deceased, conveyed to the vendor the lot. Paragraph 3 of the will of the testator dated 28th December, 1875, provides that all his book debts are to be collected and the moneys arising therefrom to be invested as follows:—"All moneys are to be invested in bank stocks or city corporation bonds. All