Judgment of the Chancery Division, 18 O.R., 199, affirmed, BURTON, J.A., dissenting.

Moss, Q.C., and *MacKelcan*, Q.C., for the appellants.

S. H. Blake, Q.C., and *W. Bell* for the respondents.

[May 13.

THE ELECTRIC DESPATCH COMPANY OF TORONTO *v.* THE BELL TELEPHONE COMPANY OF CANADA.

Contract—Telephone Company—Covenant not to transmit orders.

This was an appeal by the plaintiffs from the judgment of the Chancery Division, reported 17 O.R., 495, and came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER and MACLENNAN, JJ.A.), on the 11th and 12th of March, 1890.

The Court being divided in opinion, the appeal was dismissed with costs.

Per HAGARTY, C.J.O., and BURTON, J.A., the covenant in question was broken, subscribers being enabled by the active intervention of the defendants to give orders of the kind referred to to persons other than the plaintiffs.

Per OSLER and MACLENNAN, JJ.A. The covenant was not broken, the defendants taking no active part in the transmission of the messages, but merely allowing subscribers to communicate with one another in the usual manner.

Robinson, Q.C., and *Moss*, Q.C., for the appellants.

Lash, Q.C., and *S. G. Wood* for the respondents.

From Chy.D.] May 13.

CUMBERLAND ET AL *v.* KEARNS.

Covenant for titles—Local improvement rates.

The defendant joined in a petition for local improvements which were carried out and a rate therefore payable in ten annual instalments but subject to commutation was imposed upon the land benefited, including that of the defendant. Subsequently the defendants sold the land to the plaintiffs and conveyed it to them by deed made in pursuance of the Act respecting Short Forms of Conveyances and containing the statutory covenants for title.

Held, affirming the judgment of the Chancery Division, 18 O.R. 151, that the rate was an encumbrance created in part by the action of the defendant and that the plaintiffs were entitled to recover damages under the covenants, the amount recoverable being the smallest amount necessary to discharge the encumbrance.

Haverson for the appellant.

J. H. Ferguson, Q.C., for the respondent.

From BOYD, C.] [May 13.

IN RE DINGMAN AND HALL.

Sale of land—Contract—Time for completion—Interest.

Where in a contract for the sale and purchase of land the parties fix the time of payment of the purchase money and the time from which interest thereon is to be computed, irrespective of the time fixed for completion, interest must, in the absence of actual misconduct on the part of the vendor, be paid from the time named notwithstanding the existence of difficulties as to title justifying the purchaser in refusing to complete until they are removed.

Judgment of BOYD, C., reversed.

Moss, Q.C., and *Rowan*, for the appellant.

S. H. Blake, Q.C., and *Kilmer* for the respondents.

Co. Ct., Hastings.] [May 13.

BALDRICK *v.* RYAN.

Bills of sale and chattel mortgages—Affidavit of bona fides—Description of chattels—Concurrent mortgages.

The affidavit of *bona fides* in a chattel mortgage taken to secure the mortgagee against his endorsement of two promissory notes, which were referred to in a recital, stated that the mortgage "was executed in good faith and for the express purpose of securing *me* the said mortgagee therein named against *his* endorsement of *a* promissory *notes* for (*sic*) or any renewal of the said recited promissory notes."

Held, that "his endorsement" might be read "my endorsement," as this was clearly a clerical error, but that even with this correction the clause remained vague and incomplete, and that the affidavit was therefore fatally defective.

Held, also, (HAGARTY, C.J.O., dissenting) that the mortgagee was entitled to fall back on a previous mortgage covering the same chattels, given to secure him against his endorsement of certain notes, of one of which one of the two notes referred to in the later mortgage was a re-