

VARYING MINUTES.

See "Practice," 1.

VENDOR AND PURCHASER.

1. The defendant on the 31st of August, 1874, by writing under seal agreed to purchase certain chattels from the plaintiff at the price of \$1,078, payable \$350 down, \$100, on the first day of October, November and December, and \$59 on the first day of January following, and \$9.00 on the first day of each and every month thereafter, until the full sum of \$1,078 without interest was paid, and in case of default all payments made thereunder to be forfeited to the vendor; and time was declared to be of the essence of the contract. The defendant took possession of the property and paid punctually all the instalments falling due up to and inclusive of the 1st of April, 1875. The instalment due on (Saturday) the 1st of May was through oversight not paid or tendered, but was tendered on the 3rd, when the plaintiff refused to accept it.

Held, that under the terms of the agreement the plaintiff had a right, though a piece of very hard dealing on his part, to insist upon the default in payment of the \$9, as a forfeiture of the bargain and of the money paid; and that notwithstanding the defendant swore, and there was some evidence to corroborate the statement, that the real bargain was a sale of the chattels for \$700, and a renting of the premises (a bowling alley) in which they were placed at \$9 a month during the period the vendor was entitled to hold the same under a lease from the owner of the fee.

Whelan v. Couch—Couch v. Whelan, 74.

[Affirmed on rehearing 26th February, 1879.]

2. Where lands are sold upon which there is a subsisting mortgage, of which the purchaser is aware, and the vendor covenants that he will pay it off, the purchaser cannot set off the amount of such mortgage against the amount due upon a mortgage given by himself for unpaid purchase money, which has been transferred to a *bona fide* purchaser. His only recourse in case of damage is to proceed on the covenant of his vendor.

Eagleson v. Howe, 15 U. C. L. J., p. 45, and vol. 3 of Appeal Reports, p. 566, referred to and acted upon.

Wood v. Page, 305.

See also "Costs of shewing Title."

"Principal and Agent," 1, 2, 3.

"Will," &c., 1.