

VENDOR AND PURCHASER—Continued.

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the last instalment); that there had been dealings between the parties and an extension of time given "for payment of some of the instalments," not saying which of them. The prayer was for a declaration that the contract was at an end and void and that it should be delivered up to be cancelled; and for possession. A demurrer was allowed upon the grounds:—1. That it was nowhere alleged that the plaintiffs had rescinded the agreement, but on the contrary, they seemed to have continued to deal with, and receive payments from the purchaser. 2. That the right reserved was in the nature of a penalty, and the plaintiffs would not be entitled to rescission without limiting a time for payment. 3. That as to the prayer for possession, the purchaser in possession after default would be a tenant at sufferance and not entitled to a demand of possession, but the bill did not clearly shew that the extension of the time given for payment had elapsed. *Hudson's Bay Co. v. Macdonald* 480

—*Thwarting title*.—After trustees of a church had contracted to sell and after the purchaser had rescinded the contract because of non-compliance with the Act, the trustees applied for legislation confirming the sale. This application was opposed by the purchaser. *Held*, That the purchaser was nevertheless entitled to insist upon the objection. After the contract and after payment of part of the purchase money, the purchaser rescinded upon the ground above mentioned and also because of a misrepresentation made to her by one of the trustees. The other trustees were unaware of the misrepresentation. They did not receive any portion of the purchase money. It was applied in the erection of a church upon other land. *Held*, That the purchaser was entitled to a personal order for repayment against the offending trustee, and to a lien upon both properties, but not to a personal order against the innocent trustees. *Cummins v. Congregational Church* 374

WILL.—*Specific or pecuniary legacy*.—*Conversion*.—*Interest*.—*Capital or Income*.—In a will there was the following bequest: "I bequeath to my dear wife Sarah the interest on £1,000, out of the moneys invested by me in the Montreal Bank in Canada, to be annually paid to her by my executor hereinafter mentioned, and for her sole use and benefit during her life, and at her death the above £1,000 to be equally divided among all my children surviving share and share alike." At his death the testator was possessed of a considerable number of shares in the capital stock of the bank, the dividends upon which were payable half yearly. After the death, for the purpose of carrying into effect the bequest, the executors transferred to one of their number twenty-two shares of the stock, and he executed a declaration of trust, by which he declared he held the same in trust for the widow and her children upon the terms that he was annually to pay to the widow, in satisfaction of the interest appointed to be annually paid to her, all such dividends or interest on the twenty-two shares as should accrue to him, and in the

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