

But, that being so, his only liability is to perform Gordon's contract according to its terms, and he is, therefore, entitled to the protection of all the stipulations therein: *O'Keefe v. Taylor* (1851), 2 Gr. 95.

By the terms of that agreement, \$1,175 was due on the 1st August, 1913, with interest, and it is provided that, in default of payment of any of the instalments, the vendor may, at his option, on giving thirty days' notice, cancel the agreement. No such notice was given, and the writ herein, if it could be treated as equivalent to such notice, was issued on the 18th August, 1913.

In view of the opinion of an experienced Judge in *Edison v. Holland*, 41 Ch.D. 28, I propose to exercise what I think is the right of the Court to add Gordon as a defendant under the powers conferred by sec. 16(h) of the Judicature Act, 1913, and by the Rules of Court (see Rule 134). This works no injustice to him, as his counsel supported the defendant's counsel in his argument, and it cannot prejudice the plaintiff to have Gordon before the Court when his rights as grantee from Gordon are being dealt with.

I do not see any valid reason for refusing specific performance of the agreement. The defendant, however, is well in default; he has accepted the title, but has made no tender of money nor of a conveyance; and, being in default, can only obtain specific performance on paying up the instalment and interest in arrear. I think he should be held to the offer made in his pleadings to pay the whole; and judgment will go for specific performance against the plaintiff on that basis.

Under the circumstances, I am fully warranted in giving no costs, except that the defendant must pay the costs of the third party up to and including judgment. There was, in my opinion, no justification for the claim against the third party, who was entirely ignored by the defendant and never asked to perform the contract made between him and the defendant. Nor am I satisfied that the claim put forward against the third party is properly the subject of a third party notice, under our Rules, in the circumstances disclosed in evidence.