

HIGH COURT OF JUSTICE.

Mabee, J., Trial.]

CRABBE v. LITTLE.

[March 21.

Sale of land—Requisitions—Right of vendor to rescind—Waiver of right by negotiations—Conveyancing practice.

Contracts for sale of lands with usual provision that "if any objection or requisition be made by the purchaser which the vendor should be unable or unwilling to comply with, the vendor should be at liberty, by notice in writing, to rescind the agreement." In these cases requisitions on title were made, to some of which the vendor's solicitor replied, to the effect that they related to deeds more than twenty years old, and to facts recited in the said deeds, and that the vendor had been in uninterrupted possession since 1876, and a draft deed was enclosed. He also stated that the vendor was unwilling to go to expense as regards certain requisitions which had not been answered. The purchaser's solicitor insisted that the latter requisitions must be answered, and other negotiations took place between them, and finally the vendor served notice cancelling the contract.

Held, that the vendor's solicitor by attempting to answer the requisitions had lost his right to rescind, which right was waived by the communications between the parties both written and verbal after the delivery of the requisitions. It is on account of this state of the law that the practice has grown up that where a vendor once embarks upon an attempt to comply with requisitions, or remove objections, he reserves to himself the benefit of the right to rescind later on during the negotiations; this, however, had not been done in this case.

Jennings, for plaintiffs. *McCullough* and *Frazer*, for defendants.

Riddell, J.]

[April 8.

ERRINGTON v. COURT DOUGLAS NO. 27 C.O.F.

Division Court jurisdiction—Finding of judge—Interference with—Judge giving himself jurisdiction by error—Motion for prohibition is not an appeal.

On a motion for prohibition to a Division Court judge on