

perty to some third person in order to carry out the purchase. It also appeared that the property was subject to mortgages and registered judgments for amounts in the aggregate exceeding the sale price and that the plaintiff would have to negotiate with the judgment creditors in order to get discharges for payment of about 75 per cent. of these claims; and that, although the plaintiff had endeavoured to make such arrangements, he had not up to the commencement of the action been able to get them definitely concluded, and the trial judge found that at that time the plaintiff was not in a position to offer to the defendant a title to or a conveyance of the property free from incumbrances; and further that the plaintiff could only pay off the incumbrances out of the money defendant was to pay for the property. The written agreement was silent on the question of when the purchaser was to have possession and the plaintiff remained in possession. The defendant during the negotiations for completion, which lasted about nine months, claimed that if the sale went through he was entitled to an allowance for being left out of possession of the property and at the trial he claimed that the long delay in getting possession was another reason for refusing specific performance.

*Held*, that specific performance should be refused on the following grounds:—

(1) The plaintiff had failed to shew a title or his ability to give a clear title.

(3) Such failure caused such delay in the defendant getting possession that it would be a great hardship on him to enforce the contract now and specific performance is purely a discretionary remedy available according to the equities of each case: *Fry on Specific Performance*, 183, 185, *et seq.*

(3) The provision in the agreement as to when the purchase money was to be paid, viz., "as soon as a loan can be arranged," was too indefinite and uncertain to satisfy the Statute of Frauds: *A. & E. Ency.*, vol. XXVI., p. 37.

Action dismissed with costs.

*Crichton and McClure*, for plaintiff. *Wilson and J. F. Fisher*, for defendant.

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Mathers, J.]      AMERICAN ABELL CO. v. McMILLAN.      [Feb. 26.

*Dominion Lands Act—Charge on land created by homesteader before recommendation for patent—Declaration of Minister of Interior as to effect of such charge—Estoppel.*

The plaintiffs sold the defendant McMillan a threshing outfit and as security therefore took a charge or lien on the land in