

ROSE, J.

NOVEMBER 29TH, 1920.

HURLEY v. ROY.

Vendor and Purchaser—Agreement for Sale of Land—Purchaser's Action for Specific Performance—Attempted Rescission by Vendor—Inability to Convey whole Interest in Land—Unwillingness to Remove Objection to Title—Provision of Agreement—Inapplicability—Willingness of Third Person Entitled to Half Interest to Convey—Abatement in Purchase-price.

A purchaser's action for specific performance of an agreement for the sale and purchase of land.

The action was tried without a jury at Sandwich,
E. A. Cleary, for the plaintiff.
F. D. Davis, for the defendant.

ROSE, J., in a written judgment, said that the question was, whether the defendant was entitled to rescind the contract pursuant to a clause which provided that, if the purchaser should furnish the vendor with a valid objection to the title which the vendor should be unable or unwilling to remove, the agreement should be null and void.

The defendant acquired the land in 1915, and conveyed it, in 1916, to himself and his wife as joint tenants. Later on, he and his wife separated, and at the time when the contract sued upon was entered into they were living apart.

The plaintiff made an effort to purchase in 1919. After some discussion of the price, the defendant said he would sell, but he said it would be necessary that his wife should sign the agreement. He said that he told the plaintiff more than this, but the learned Judge did not think that he did, and did not believe that the plaintiff knew, or had reason to know, that there was any necessity for the wife's signature other than the necessity of barring her dower. After the plaintiff and the defendant had agreed upon a price, and the statement had been made as to the necessity of procuring the wife's signature, the plaintiff and the defendant went to see her at her house, where she expressed a willingness to have the land sold. The defendant and she then consulted apart from the plaintiff, and had some discussion as to whether, in case the sale went through, they should divide the purchase-money, or whether the defendant should keep the purchase-money and allow her a monthly sum for the support of herself and her child. They agreed upon the latter course, and it was because the wife