

MIDDLETON, J.

JUNE 10TH, 1913.

KNIBB v. McCONVEY.

Vendor and Purchaser—Contract for Sale of Land—Action by Purchaser for Specific Performance—Default of Purchaser in Payment of Price—Tender of Conveyance by Vendor—Failure of Vendor to Comply with Terms of Agreement—Cancellation of Contract—Relief from—Costs.

Action for specific performance of an agreement for the sale of land by the defendant to the plaintiff.

E. F. B. Johnston, K.C., for the plaintiff.

J. M. Ferguson, for the defendant.

MIDDLETON, J.:—By agreement dated the 25th February, 1913, the defendant agreed to sell the lands in question to the plaintiff. At this time the title was vested in the Title and Trust Company; the defendant having a contract with them under which he was entitled to call for a conveyance upon payment of his purchase-money.

By the agreement, the price, \$6,300, was to be paid as follows: \$200 on the execution of the agreement, and the balance on the completion of the sale, which was to be on the 10th March, 1913.

Time is said to be of the essence of the agreement, but there is no forfeiture clause. The agreement provides that the deed is to be given at the expense of the vendor.

The \$200 was paid; the title was searched and found satisfactory; and the purchaser had every intention of completing his contract. On Saturday the 8th March, no draft deed having yet been prepared or submitted by the vendor, the vendor wrote a letter to the purchaser's solicitors, which reached them on the morning of the 10th March. After referring to the contract and to the provision that time was of its essence, he proceeds: "I, therefore, give you notice that on the 10th day of March, 1913, I will tender the executed deeds for this parcel of land at your offices in the Canada Life Building, King street, Toronto. Therefore, if this sale is not closed on the 10th day of March, 1913, I will cancel this sale."

The purchaser's solicitors communicated with their client and with the vendor, and an appointment was made for 2.30