

TRESPASS AND TROVER.—*Continued.*

able to that cause. Just previous to the hour fixed for rendering judgment in term affidavits were read by the defendant's counsel, shewing that since verdict, the plaintiff had threshed seven of the stacks for his own use. *Held*, That such a matter could be dealt with by the court. Affidavits having been filed and a further argument having taken place, *Held*, 1. That under the charge the jury might well have given damages in trover for the whole crop, instead only for that part converted; and that the judge's charge was therefore erroneous. (Dubuc, J. diss.) 2. The verdict was, therefore, further reduced to \$225, being the value of the stacks converted by the defendants, less the value of one of them re-taken by the plaintiff; the plaintiff to have a certificate for full costs. (Dubuc, J., diss.) Upon the objection being taken that no certificate could be granted, the court, without deciding the point, ordered the verdict to be entered for \$260, the plaintiff to give credit thereon for \$35, the value of the stack retaken by him. *Monkman v. Follis* . . . . . 317

VENDOR AND PURCHASER.—*Specific performance or rescission.*

—*Demurrer.*—There is a distinction between a bill for specific performance and a bill asking that a time may be fixed for payment, and in default, rescission. The principle upon which the court acts in decreeing cancellation of an agreement for the sale of land, is practically the same as that on which foreclosure of a mortgage is decreed. Consequently, a bill for rescission may be filed for default in payment of an instalment, although the whole purchase money may not be due. An agreement for the sale of land, provided that upon default the vendor might re-enter or re-sell. *Held*, That without exercising these powers the vendor might file a bill for rescission. *West v. Lynch* . . . . . 167

—*Lien of purchaser.* See Homestead and Pre-emption.

—*See Solicitor.*