

in sixty days thereafter, and the balance to remain on mortgage. The purchasers paid the \$4,000, but refused to pay the \$40,795. to recover which this action was brought.

Held, that the provision as to the mortgage not stating when it was to be payable, did not render the agreement void for uncertainty.

Held, also, that the plaintiff could recover the \$40,795, without tendering a conveyance of the land, for that his right thereto was an independent right, and not a concurrent act with the tendering such conveyance; and at all events it was the purchasers' duty to prepare and tender the conveyance; that it was unnecessary for the plaintiff to aver and shew that he had a good title, for he was only required to make a good title when he could be called upon to do so, which could not be until the last instalment was demanded or defendant shewed his readiness and willingness to arrange that according to the contract; and that it was therefore no defence to aver that the plaintiff could not give a good title. *McDonald v. Murray et al.*, 573.

[Appealed and stands for argument.]

3. *Statute of Frauds—Evidence—Suit for specific performance—Deed executed, but not delivered.*—When A., whose wife owned a certain freehold property on St. George street, wrote to B., the owner of a certain leasehold property on King street, with reference to the said properties, as follows: "If you will assume my mortgage, and pay me in cash \$3,750; I will assume your mortgage of \$5,000 on the leasehold;" and B. replied, "Your offer of this date, for the exchange of my property on King street for your property

on St. George street, I will accept on your terms."

Held, not a sufficient memorandum of the contract to satisfy the Statute of Frauds.

Held, also, in a suit brought for the specific performance of the above contract by B., correspondence between the solicitors of the parties of a date subsequent to the date of the above letters, as also the requisitions respecting title which passed between the solicitors, were inadmissible in evidence.

Held, further, the fact that A's wife had signed a conveyance of the land in question to B. which conveyance had never been delivered, and did not, by recital or otherwise, set forth the contract relied on, could not assist B. in the suit for specific performance. *McClung v. McCracken et al.*, 609.

4. *Assumption of mortgage by purchaser—Liability to pay off and protect vendor.*—M. conveyed land to the plaintiff subject to a mortgage to the T. & L. Co. for \$2,000, and one to C. for \$500, which the plaintiff covenanted to pay and save M. harmless therefrom. The plaintiff then conveyed to the defendant in consideration of "\$1,050 and assuming the payment of the mortgages" aforesaid. The defendant gave back a mortgage for the balance of purchase money. He went into possession and paid some interest on the T. & L. Co. mortgage. Subsequently a new arrangement was made and the defendant's mortgage was discharged and a mortgage for \$1,850 was given by the defendant to the plaintiff which included the amount of three promissory notes for \$350, and other items besides the balance of the purchase money.