

VENDOR AND PURCHASER.

PAGE

VENDOR AND PURCHASER.—*Bill for specific performance or for rescission.*—*Parties.*—*Pleading.*—*Waiver.*—*Fixtures.*—Distinction between a specific performance suit and one to rescind a contract in case of failure to perform by a specified time. (The plaintiffs agreed to sell to B. certain lands upon certain terms. B. paid a portion of the purchase money and afterwards conveyed to the defendant. Afterwards the plaintiffs removed certain buildings from the lands. The buildings were large and built upon stone foundations, a portion of which, either originally or by pressure were beneath the level of the ground. Upon a bill against the defendant alone for payment or rescission, the defendant claimed repayment of the money paid to the plaintiffs. *Held*, 1. That *prima facie* the buildings were fixtures. 2. That the purchaser would have been entitled under such circumstances to sue for the return of the purchase money. 3. That the present defendant could not recover the money in the absence of B. 4. That no decree for rescission could be made in the absence of B., the defendant having in no way been substituted for B. as purchaser. 5. To obtain a decree for specific performance by vendor with an abatement from the purchase money by reason of the removal of the buildings, the bill must be so framed. 6. Waiver must be specially pleaded. *The Hudson's Bay Co. v. Macdonald.* 237

—*Breach of contract by purchaser.*—*Damages.*—Defendants took proceedings to expropriate lands of the plaintiff. The commissioners awarded to the plaintiff \$21,455, but the award was not confirmed by a judge, as required by the defendant's charter. *Held* (overruling *Dubuc, J.*), that the award could not be enforced. After an award, but before its confirmation, the defendants agreed to give to the plaintiff, in exchange for the same land, two other pieces of land and \$12,000. The plaintiff thereupon removed certain buildings, the defendants used the land for a street, and the defendants paid the \$12,000, but refused to convey the two parcels of land, alleging that they formed portions of streets. *Held* (affirming *Dubuc, J.*), 1. That a bill might be filed to recover damages for the breach of the contract, the deed from the plaintiff to the defendant having erroneously acknowledged receipt of the purchase money. 2. That the damages might fairly be placed at the difference between the \$21,455 and the \$12,000, without proof of the locality of the two parcels of land or their value, the defendants having had in their custody the documents by which the locality could have been proved, and not having produced them, but alleged their loss. *Wright v. The City of Winnipeg.* 46

—*Rescission.*—*Penalty.*—*Ejectment after default.*—A bill by a vendor alleged that by the contract, time for the deferred payments should be of the essence of the agreement, and that upon default the vendor should be at liberty to re-enter upon or re-sell the lands, all payments on account being forfeited; that certain payments on account had been made, (not shewing whether before or after the day fixed for

VENDOR

the last
and an
not sayi
contract
be cance
grounds
rescinde
continue
2. That
plaintiffs
payment
possessio
titled to
the exte
Bay Co.

7
sell and
complan
the sale.
the purch
After the
the purch
because o
The other
not receiv
erection of
entitled to
and to a li
the innoc

WILL.—*Spe*
Income.—
my dear w
by me in th
my execut
during her
among all
the testator
capital stock
yearly. Af
bequest, the
shares of th
he declared
upon the ter
of the inter
or interest of