

KELLY, J.

DECEMBER 31ST, 1919.

DIETT v. ORECHKIN.

Vendor and Purchaser—Agreement for Sale of Land—Provision for Reduction of Price on Payment of Full Balance on or before Day Named in Agreement—Offer to Pay after Day Named—Tender—Evidence—Necessity for Strict Compliance with Contract—Waiver not Established—Counterclaim—Recovery of Instalments of Purchase-money, Interest, and Taxes.

Action for specific performance of an agreement for the purchase by the plaintiff from the defendant of land in the city of Windsor.

Counterclaim by the defendant (the vendor) for payment of two quarterly instalments of \$200 each of principal and 6 months' interest and \$36.72 for insurance premium paid by the defendant.

The action and counterclaim were tried without a jury at Sandwich.

A. B. Drake, for the plaintiff.

F. C. Kerby, for the defendant.

KELLY, J., in a written judgment, said that the agreement was dated the 7th February, 1919; the price was \$4,000, of which \$1,000 was paid on the execution of the agreement, and the balance was payable in quarterly instalments of \$200 each, with interest, and with the provision that if the purchaser should pay the whole of the principal owing and interest on the 1st June, 1919, or sooner, the vendor would allow the purchaser \$200 in reduction of the principal—would accept \$2,800 as in full of the balance. Time was expressly made of the essence of the agreement.

Before the 1st June, the plaintiff intimated to the defendant that he would avail himself of the privilege and pay the balance of principal on that day. It was suggested that what took place between them resulted in an understanding that the payment need not be made promptly on that day, but would be accepted afterwards. That was not the case. There was no separate agreement and no variation of the original agreement relieving the purchaser from strict compliance with that term of the contract.

The balance of the purchase-money was not paid or tendered prior to the 4th June. On that day, Churchill, the plaintiff's agent, told the defendant that he (Churchill) was prepared to pay the \$2,800 with interest to the 1st June and three days' additional interest. Churchill said that he offered the defendant the amount, \$1,000 in cash and his own cheque for the balance.