

Now it is submitted that, so far as the *remedy* is concerned, it makes no difference whether the absolute covenant is contained in the agreement of sale or in the conveyance. In these instalment-plan agreements, such as was under consideration in *Greig v. Francis Canadian Mortgage Company*, the only logical reason for inserting such a covenant seems to be for the express purpose of *preventing* the rescission of the contract by the purchaser, i.e., it assumes that the purchaser, while recognizing that the vendor may be unable to clear up all defects of title before the time for completion arrives, is nevertheless willing to take the property and pay the instalments of purchase money in the meantime, *relying* on the vendor's covenant by way of indemnity against the adverse outstanding interests.

In England, under the Conveyancing Act of 1881, the Court may permit payment into Court to provide for the amount of the incumbrance (where it is a mortgage, lien or charge) with future costs, expenses and interest, but will not *force* this on the vendor, where the amount exceeds the purchase money; but perhaps a different result would be reached where the vendor has given an absolute covenant for title. It is submitted further that to the extent that the purchaser may require to be and can reasonably be indemnified against an adverse interest or estate, the same principle should be adopted, where the purchaser is willing to take the estate, with a present defective title, relying upon the vendor's absolute covenants for title.

In connection with the general question of rescission, where before conveyance the purchaser in possession is disturbed or ejected by one claiming under title paramount to the vendor's: Note (f) p. 1137 of *Williams on V. & P.* is very important. He says: "Here it may be noted that if, before the conveyance has been fully executed, either the vendor or the purchaser, having been let into possession, be ejected by anyone claiming under a title paramount to the vendor's, the purchaser can recover any purchase money already paid by him and resist payment of any part of the