

of the M. B. Society, that it was paid and settled in full, but the signature was not proved. The mortgage recited that W. had become the purchaser of two shares in the M. B. Society, and had agreed to pay £100 therefor; the proviso was for payment at the times appointed by the rules of the Society—by monthly subscriptions, to continue until the objects of the Society should be attained. Affidavits were produced from the vendor and the persons who had owned the land during the ten years next before the contract, that they had paid nothing and had never been asked to pay anything upon this mortgage. In a conveyance dated 3rd of May, 1856, this mortgage was treated as a subsisting incumbrance, and in a conveyance dated 10th of October, 1874, the grantor covenanted that he would procure a discharge of this mortgage. No evidence was given as to when the mortgage money became payable under the rules of the Society, nor whether the objects of the Society had been attained, nor any explanation as to why the mortgage had not been discharged, nor as to any difficulty in showing payment.

Held, that this mortgage should not, in favour of the vendor, be presumed to have been satisfied; nor, having regard to the provisions of Chancery General Orders 394 and 396, should the question be disposed of upon a presumption of law. The vendor should show that some portion of the purchase money did not become payable under the rules of the Society within the period of ten years before the contract, or that this could not be ascertained; that the records of the Society could not be referred to; or that there was difficulty in proving the fact set forth in the indorsement on the mortgage that it had been paid in full.

(2) The purchaser required evidence of the registration of a deed from L. G., and other named persons, to S. G., which deed was set out in the abstract and stated to be registered. The vendor produced a deed answering the description in the abstract, but having no certificate of registration indorsed upon it, and a registrar's abstract containing a statement of the registration of a conveyance bearing the same date and covering the same land as the abstracted deed, but setting forth the parties to it only as "L. G. et al. to S. G."

Held, that the purchaser was entitled to some further proof of the identity of the regis-

tered conveyance with the one produced; either the production of a certified copy of the registered conveyance, or the certificate of the registrar indorsed upon the instrument produced that the original was registered in his office. The purchaser was not bound to take the statement produced and examine it with the registered instrument, or procure a copy at his own expense.

Re Charles, 4 Chy. Chamb. R. 19, not followed.

(3) The vendor set out a perfect paper title in his abstract, and wound up with an assertion that he had also a good title by virtue of the statute of limitations.

Held, that if the vendor relied upon the possessory and not the paper title, the purchaser would be entitled to stricter and more satisfactory and complete evidence, and should have the persons who made the affidavits produced for cross-examination, for the reasons given in *re Boustead* and *Warwick*, 12 O. R. App. 491.

(4) It appeared that the vendor had elected to make out a title perfect both as to abstract and verification, in order that he might compel the purchaser to accept it.

Held, that this being so, the purchaser was entitled to have the title made out as strictly and completely as if the vendor had not in any way guarded himself by the terms of the contract.

[As to the operation and effect of the contract, see this case reported, 14 O. R. 97.]

Hoyles, for the plaintiff.

G. W. Marsh, for the defendant.

Mr. Dalton.]

[Feb. 1, 1888.

BROWN v. PEARS.

Discovery—Action for specific performance—Examination of grantors of vendor before defence—Objections to title—Condition in contract—Time.

In an action by a vendor for specific performance of a contract for sale of land at the price of \$24,000, it appeared that less than three weeks before the contract the vendor had obtained a conveyance of the land from his two sisters, in which the consideration expressed was \$5,000. The sisters were old and infirm, and being unmarried, lived, and had