

lice had left town; on page 8 of the same issue there was an article stating that two ladies for the past few days had been selling tickets for a recital by one Greenleaf, and that the tickets were being sold "in the manner similar to those for a recital by a gentleman of the same name nearly two years ago, which was ostensibly for the benefit of the orphanage, but which the promoters were obliged to abandon." The manner of selling tickets was as a fact the same in both cases.

Held, that the article on page 1 did not necessarily refer to the plaintiff, and that the article on page 8 was fair comment on a matter of public interest and was true.

Cassidy, K.C., for appellant. *Rodwell*, K.C., for despondent.

Hunter, C.J.]

[Feb. 8,

PEIRSON V. CANADA PERMANENT MORTGAGE CO.

Specific performance—Agreement for sale of land—Option to cancel on failure to pay balance—Time of essence of contract—Laches—Conveyance—Conditional execution of.

Action for specific performance tried before HUNTER, C.J., at Victoria. Plaintiff agreed to purchase land from defendant and to pay the balance of the purchase money on 1st July, 1904, the agreement providing that time should be of the essence of the contract, and that in case of the plaintiff's failure to pay the balance at the time agreed defendants should be at liberty to treat the contract as cancelled; a deed of the property was executed in Toronto and sent to defendants' agent in Vancouver to deliver to plaintiff when he paid up; plaintiff did not pay the balance on 1st July, and on 18th July defendants notified him they treated the agreement as cancelled and that they had re-sold the land. Plaintiff had done clearing on the land to the value of about \$500, but of this the defendants were not aware.

Held, that defendants had exercised their option of rescinding within a reasonable time, and that plaintiff was not entitled to any relief. Action dismissed.

Harold Robertson, for plaintiff. *A. E. McPhillips*, K.C., for defendants.

Martin, J.]

[Feb. 13.

ALASKA PACKERS' ASSOCIATION v. SPENCER.

Practice—Order for special jury—New trial—Whether order is exhausted after first trial.

Summons for trial with a special jury.

Pursuant to an order for trial before a judge and a special jury the trial took place: on an appeal a new trial ordered. Defendant now applied for a trial with a special jury.