

refuse to honour it, retaining the money to meet some demand of its own which has not yet matured, or to pay some other cheque drawn by the customer? Or again, when cheques come in through the Clearing House, in one bundle, which in the aggregate exceed the amount at the customer's credit, why should the bank be at liberty to determine which should be paid and which should be rejected?

No case was made here on which the plaintiff bank could recover in respect of the costs in the previous unsuccessful litigation.

Judgment for the plaintiff bank for the balance remaining due upon the five cheques, with interest and costs.

CLUTE, J.

NOVEMBER 25TH, 1915.

O'HEARN v. FRIEDMAN.

Vendor and Purchaser—Agreement for Sale of Land—Default in Payment of Purchase-money—Forfeiture of Moneys Paid—Liquidated Damages—Actual Damage Suffered by Vendor—Mortgagors and Purchasers Relief Act, 1915, sec. 2(1)(c), 4(3)—Recovery of Possession—Costs.

On the 22nd July, 1913, the plaintiff entered into a written agreement to sell to the defendant Friedman certain lands and goods for \$1,700—\$100 down and \$1,600 by monthly instalments of \$100 each, with interest. The defendant Friedman went into possession, and had paid, when this action was brought, \$1,100. The agreement contained covenants by the defendant Friedman against waste, to pay taxes, and to give up possession on breach of any of the covenants and allow the plaintiff to retain all moneys paid as liquidated damages; time was declared to be of the essence of the agreement. No payment had been made since the 22nd July, 1914, when the defendant Friedman made an assignment for the benefit of creditors to the defendant White, who had since been in receipt of the rents and profits of the premises, and had committed waste. The taxes for 1914 and 1915 had not been paid.

The plaintiff sought to have the agreement declared null and void from the 22nd August, 1914, and to be allowed to retain as liquidated damages the \$1,100 paid; the plaintiff also claimed a reasonable rental from the 22nd August, 1914, and possession of the property.