

March, 1916, a reference was directed to the Master in Ordinary to ascertain and state whether the defendant could make a good title to the lands in question and convey to the plaintiff, and, if so, when.

On the 24th March, 1916, the Master reported that the defendant was able, on and at any time after the 2nd March 1916, to make a good title and convey to the plaintiff.

The plaintiff (by leave), appealed from the report, and renewed his motion for judgment.

The appeal and motion were heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ., on the 12th April, 1916.

J. J. Gray, for the plaintiff.

W. E. Raney, K.C., for the defendant.

MEREDITH, C.J.C.P., read a judgment in which he said that this motion was made for the purpose of having a determination of the question whether the vendor (the defendant) could now give to the purchaser (the plaintiff) that which he sold to him, namely, the land in question in fee simple free from incumbrance. The purchaser contended that the vendor could not, for two reasons: (1) because there are some restrictive building conditions with which the land is burdened; and (2) because of a writ of execution against the goods and lands of the vendor now in the sheriff's hands for execution in full force and virtue.

As to the first of these reasons, it was sufficient to say that this action was brought by the purchaser, to set aside his agreement to purchase, on the ground, among others, that the vendor could not convey to him, as agreed, because of these very restrictive conditions; and that that ground of action and all others failed; and, at his request, a judgment of specific performance was pronounced. The purchaser could not have the benefit of this ground of action a second time.

On the second ground, the contention of the purchaser—that he could not be compelled to take the land until the effect of the *fi. fa.* was removed—was plainly right. Both at law and in equity the vendor is the owner of the land in the sense of having the lawful right to it; the purchaser has only an equitable right to it; to that extent, if the agreement is carried out, he is treated in equity as substantially the owner; the vendor, however, is still the owner, and can convey his ownership, subject to any equitable right which the purchaser may have. The execution creditor, assuming that his execution is valid, has a right in the land in question to the same extent as his debtor has—to be worked out in the regular way by sheriff's sale of the debtor's interest in the land.