

indebtedness of the defendant Green endorsed or guaranteed by McCormick to the bank. The defendant McCormick should have his costs against the plaintiff; and the plaintiff's costs of the action and the costs paid by him to the defendant McCormick are to be added to the plaintiff's claim against the defendant Green. No order as to the costs of the motion for judgment. A. Ellis, for the plaintiff. T. McVeity, for the defendant Green. H. Fisher, for the defendant McCormick.

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MILLER v. YOUNG—BRITTON, J.—JULY 19.

*Vendor and Purchaser—Agreement for Sale of Land—Vendor's Ability to Shew Title—Specific Performance—Rescission—Return of Moneys Paid—Reference—Costs.*—Action for a return of moneys paid by the plaintiff to the defendant upon a contract for the sale by the defendant to the plaintiff of land in the city of Toronto. The defence was, that the plaintiff was not entitled to insist upon repayment until the defendant failed in his negotiations to procure title. The defendant counterclaimed for specific performance. The action and counterclaim were tried without a jury at Toronto. BRITTON, J., in a written judgment, after setting out the facts, said that, as he viewed the facts, there should be a judgment declaring that the agreement between the plaintiff and the defendant for the sale or exchange of lands was a valid and subsisting one. In case the defendant could on the 15th or 19th August, 1916, have made and can now make a good title, the plaintiff has broken the contract, and the defendant is entitled to specific performance. In case the defendant could not on the 15th or 19th August, 1916, or cannot now make a good title, the contract is to be rescinded and the defendant to refund to the plaintiff what she has paid to him. There should be the usual judgment against the plaintiff for specific performance, with a reference to the Master in Ordinary as to title and as to the amount of money the plaintiff has paid to the defendant on the contract. In default of the plaintiff performing the contract on her part, in case a good title can be made, the land is to be sold with the approbation of the Master, and the purchase-money is to be applied, first, in payment of the costs of sale, and, secondly, in payment of the amount due to the defendant for principal, interest, and costs; the balance, if any, to be paid to the plaintiff. Shirley Denison, K.C., for the plaintiff. W. N. Tilley, K.C., and J. D. Bissett, for the defendant.