

then exceeded the amount that the defendant was to pay. It was not reduced at the time, and in fact it never was reduced. Consideration of the authorities satisfies me that this was a matter of adjustment, and so of conveyance and not of title.

The contract . . . was that the defendant should take subject to an incumbrance fixed at a certain amount. It was an agreement for a continuance of the charge if the mortgagees would agree to it, or, if not, for an assumption and payment of it by the defendant. . . .

[Reference to Dart on Vendor and Purchaser, 6th ed., p. 324.]

Here the time, as extended by waiver, had not been fixed for completion. There was some evidence that arrangements had been made for payment of the \$300 or whatever sum above that amount would be necessary to reduce the mortgage to \$4,210. See *Townsend v. Chumperdown*, 1 Y. & J. 449; Dart, p. 1181; Armour on Titles, 3rd ed., p. 47.

So I must hold that the non-payment by the plaintiff up to the time of the attempted rescission of the contract by the defendant cannot avail as a defence in this action.

Upon these findings the plaintiff is entitled to recover.

The damages claimed by reason of the alleged loss of the plaintiff's land because it was sold under the mortgage which the defendant was to assume cannot be allowed.

The measure of damages is the difference between what the plaintiff was to pay for the defendant's land and its actual value. No evidence was given on that.

The proved damages were very small. . . . The plaintiff should get the expenses of conveyance and the expense he was put to by reason of this purchase falling through.

In estimating the plaintiff's damages at \$125 I am allowing him liberally for everything lost by him. Anything further would be purely speculative.

Judgment for the plaintiff for \$125 with costs on the proper scale. Counterclaim dismissed without costs.

STILWELL V. TOWNSHIP OF HOUGHTON—MASTER IN CHAMBERS
MAY 14.

Particulars—Statement of Claim—Highway — Defects—Injury—Damages.]—Motion by the defendants, before pleading, for particulars of the statement of claim in an action for dam-