

Holt (1890), 44 Ch. D. 492; In re Head's Trustees and Macdonald (1890), 45 Ch. D. 310. If, therefore, the purchaser was entitled to a deed on tender of the balance of the 50 per cent. and the mortgage, he became entitled to rescission.

Reference to Pioneer Bank v. Canadian Bank of Commerce (1915), 34 O.L.R. 531, ante 96.

In the present case, it was plain that what was contracted for by the defendant was a document which would give him security on the land; and this the plaintiff's mortgage did not. It was no answer to say that the plaintiff could not give a valid and registrable mortgage; he was unable to perform a condition precedent, and that was fatal.

The whole question then was as to the effect of the plaintiff's infancy; and the Court was bound by Short v. Field (1915), 32 O.L.R. 395, to hold that the plaintiff could not recover back the moneys already paid by him: he became the "potential owner of the place," listed it for sale, tried to sell it, and acted much more as the owner than did the infant in Wilson v. Kearsce (1800), Peake Add. Cas. 196.

Appeal dismissed with costs, with the same right to specific performance as that given by Sutherland, J., on payment of all costs, including the costs of this appeal.

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NOVEMBER 27TH, 1915.

CROMWELL v. RIOUX.

*New Trial—Evidence—Amendment—Costs.*

Appeal by the plaintiff from the judgment of the County Court of the County of York dismissing an action brought to recover damages for the alleged wrongful seizure of the goods and chattels of the plaintiff.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

R. S. Robertson, for the plaintiff.

R. U. McPherson, for the defendant.

FALCONBRIDGE, C.J.K.B., delivering the judgment of the Court, said that at the opening of the trial the plaintiff asked