

of the agreement the vendor served him with a notice for cancellation which incorrectly recited that the contract contained a stipulation for its cancellation, in case of default, "without notice," and concluded by declaring the contract null and void "in accordance with the terms thereof as above recited." The vendor, subsequently, refused a tender of the unpaid balance of the price and re-entered into possession of the lands. In an action by the purchaser for specific performance or the return of the amount paid, rescission was not asked for.

*Held*, that as the vendor had not given the notice required by the conditions of the agreement he could not retain the money as forfeited on account of the purchaser's default; that as the payment had not been made as earnest, but on account of the price, the purchaser was entitled to recover it back on the cancellation of the contract, and that, as the relief sought by the action could not be granted while the contract subsisted, a demand for rescission must necessarily be implied from the plaintiff's claim for the return of the money so paid.

Appeal dismissed with costs.

*J. B. Coyne*, for appellants. *C. D. Livingstone*, for respondent.

B.C.]

[Dec. 6, 1911.]

BRITISH COLUMBIA LAND & INVESTMENT AGENCY v. ISEITKA.

*Chattel mortgage—Sale under powers—Notice—Offer to redeem—Tender—Equitable relief—Evidence—Proceedings taken in good faith.*

To impeach a sale under powers in a chattel mortgage on the ground that an offer to redeem was made prior to the time fixed by the notice of sale, the person entitled to redeem is obliged to shew that the amount due under the mortgage was actually tendered or that the mortgagee was distinctly informed that the mortgagor was then and there ready and willing to pay what was so due and, being thus informed of the intention to redeem, refused to accept payment.

In the exercise of his power of sale, a mortgagee of chattels is bound merely to act in good faith and avoid conducting the sale proceedings in a recklessly improvident manner calculated to result in sacrifice of the goods.

Per *DUFF, J.*, he is not obliged (regardless of his own interests as mortgagee) to take all the measures a prudent man might be expected to take in selling his own property.