

convey was not in him but in A., who had contracted to sell to B., and B. to the plaintiff. By the contract between the plaintiff and defendant a day was fixed for completion, but time was not made of the essence.

The trial Judge found that the parties were dealing, each to the knowledge of the other, with the properties as a matter of mere speculation. The parties continued to negotiate up to a period some months after the date fixed for completion, when the defendant gave the plaintiff notice that unless the exchange was carried out on the day after the notice, the contract would be treated as rescinded. In an action for specific performance,

Held, that, by reason of the speculative character of the property, the presumption was that time was to be of the essence of the contract; but the presumption was rebutted by the parties treating the contract as still subsisting after the day for completion had passed; and it was then competent for either of them to put an end to the delay by a notice to complete; but the notice given was not a reasonable one and it had no effect upon the rights of the plaintiff.

Held, also, that the defendant had ratified the contract by making requisitions regarding the title with knowledge that it was not in the plaintiff, and could not shift his position and take the ground that no contract ever existed; by treating the contract as a binding one he had made his election and was remitted to the rights of an ordinary purchaser.

Semble, also, that the plaintiff could have made A. a party to an action against B. to compel specific performance of B.'s contract, offering to carry out, on B.'s behalf, the whole contract between A. and B., and therefore the objection to the plaintiff's title was a mere matter of conveyance.

F. E. Hodgins for the plaintiff.

J. B. Clarke, Q.C., for the defendant.

Chancery Division.

Div'l Court.]

[Feb. 20.

ZILLIAX v. DEANS ET AL.

Voluntary Settlement—Conveyance of land to wife—Attaching creditor—Claim under \$40.

A creditor for an amount under \$40 is not such a creditor as can attack and set aside a

conveyance of land as voluntary, or fraudulent, and he cannot improve his position by bringing his action on behalf of other creditors.

Shepley, Q.C., for appeal.

Idington, Q.C., contra.

MANITOBA.

COURT OF QUEEN'S BENCH.

KILLAM, J.]

[February 24.

IN RE SHAW.

Certiorari—Gaming house—By-law and provincial statute—Ultra vires.

Applicant was convicted of having unlawfully kept a gambling-house in Winnipeg contrary to the provisions of a civic by-law which is claimed to have been authorized by a provincial statute empowering the City Council to pass by-laws suppressing gambling-houses. Sec. 37 Vict., c. 7, s. 96-8, 1873; 45 Vict., c. 36, s. 101, 1882; 53 Vict., c. 51, 1890.

Held, that the provincial statute and the by-law were invalid, being *ultra vires*, on the ground that under B.N.A. Act, s. 91, s.s. 27, a gambling-house comes within the subject of "criminal law," and hence within the powers of parliament, and that such an offence must be punished by indictment or such other procedure as parliament may provide.

2. That, at common law, gambling was not in itself unlawful, though it was so to keep a common gaming-house.

3. That 38 Vict., c. 41 (C.), does not prevent the proof of the offence of keeping a common gaming-house by such evidence as would have been sufficient at common law and before any games were made unlawful.

Certiorari granted.

Hough for City of Winnipeg.

C. P. Wilson for prisoner.

BAIN, J.]

[Feb. 26.

GILLESPIE v. LLOYD ET AL.

Demurrer—Wrong parties—Shareholders' rights in a corporate company.

Bill filed by a shareholder on behalf of himself and of all other the shareholders of the H. B. Ry. Co. against the holders of certain bonds which, he claims, were issued by the president without authority, and asking that they be de