

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Ont.]

SNELL v. BRICKLES.

[Feb. 23.

Vendor and purchaser—Contract for sale of land—Payment by instalments—Specified dates—Time of essence—Forfeiture—Penalty—Payment declared to be deposit.

Held, 1. Where a contract for the sale of land provides for payment of the purchase money by instalments at specified dates, that time shall be strictly of the essence of the contract, and that in default of payment of any instalment on the day named the vendor may rescind and retain all monies paid on account, such condition of forfeiture of the monies paid is only in the nature of a penalty. If default occurs and the vendor declares the contract at an end the court may still grant the purchaser relief by way of specific performance: *Kilmer v. British Columbia Orchard Lands Co.* (1913), A.C. 319.

2. (Affirming the judgment appealed from, 28 O.L.R. 358, Fitzpatrick, C.J., and Anglin, J., dissenting), that when by the contract the first payment of the purchase money is stated to be made "as deposit accompanying this offer to be returned to me if offer not accepted" and it contains the above provisions as to time being of the essence and forfeiture of payments in case of default, the deposit of the initial payment is only security for performance and the principle of the above case may apply to entitle the purchaser to relief.

Appeal allowed with costs.

Troudfoot, K.C., for appellant. *J. E. Jones*, for respondent.

N.S.]

[March 2.

ATTORNEY-GENERAL OF CANADA v. CITY OF SYDNEY.

Militia Act—R.S.C. (1896), c. 41—"Senior Officer . . . present at any locality"—Military district—Right of action—4 Edw. VII. c. 23, s. 86.

By s. 16 of the Militia Act, Canada is divided into Military districts of which the Province of Nova Scotia is one. By s.