

Province of Manitoba.

KING'S BENCH.

Dubuc, C.J.]

CZUACK V. PARKER.

[June 1.

Specific performance—Sale of land—Purchaser for value without notice—Contract—Cancellation—Service of notice of cancellation—Costs—Further relief—Amendment.

Action for specific performance of an agreement for sale of land by defendant Hough to the plaintiff dated 24th November, 1902, for the sum of \$640, of which \$200 was to be paid in cash and the balance in five annual instalments, with interest at six per cent per annum, payable half-yearly. The plaintiff paid the \$200, went into possession of the land, built a house and stable on it and did some ploughing. He did not register his agreement, the land having been bought under "The Real Property Act." In July, 1903, the defendant Robinson, wishing to acquire title to the property in question so as to add it to adjoining land owned by him, through his solicitor obtained from Hough an assignment of the agreement and also a transfer of his title to the land on payment of the amount due by plaintiff under the agreement. Before signing such documents Hough informed the solicitor that he had sold the land and stipulated verbally with him that the plaintiff was to be protected in his purchase. The assignment and transfer were prepared by Robinson's solicitor, and contained no reference to the sale that had been made to plaintiff. The trial judge found as a fact that Robinson had been guilty of fraud in procuring said transfer with the intention of depriving the plaintiff of the benefit of his purchase. Plaintiff having neglected to pay the interest due in May, 1903, Robinson undertook in the following August to cancel the agreement of sale held by the plaintiff, and swore at the trial that he had sent a notice of the cancellation by mail to the plaintiff, as provided for in the agreement. There were two clauses in the agreement providing for cancellation in case of default by the purchaser in making payment; the first saying that, after such default, the vendor might cancel with or without notice; the second, that "in case of default, and the vendor shall see fit to declare this contract null and void by reason thereof, such declaration may be made by notice from the vendor addressed to the purchaser directed to the post office at Gonor, Manitoba.

Held, that the vendor might elect to adopt one or other of such modes, that if he elected to cancel without giving notice he could not do so by a mere operation of his mind, but must do something by which he clearly gives the purchaser to understand that he decides to avoid the contract and that the relation of vendor and purchaser no longer exists between them, or he must do some act directly affecting the vendee in his position or interest, as, for example, a sale to another: *McCord v. Harper*, 26 U.C.C.P. 104: and on the other hand, if he adopts the mode of cancell-