

these circumstances, terminate the contract abruptly, as he attempted to do by the letters of the 20th and 27th January, 1913—he must give a notice fixing a date within which the contract is to be completed, and that date must afford the other party a reasonable time: *Malins, V.-C.*, in *Webb v. Hughes*, L.R. 10 Eq. at pp. 286, 287; *McMurray v. Spicer*, L.R. 5 Eq. 527.

There are other reasons. A person who is himself in default cannot avail himself of this stipulation as against the other party: *Foster v. Anderson*, 15 O.L.R. 362, 16 O.L.R. 565. I am quite satisfied that it was understood that the plaintiff's share of the rent was to be applied upon the October payment, and that this and the state of the mortgage account against the property was the cause of the delay. On the other hand, the moving cause of the defendant's sudden energy was the same as that which caused the dog to grab at the shadow in the stream, the desire to grasp what was not his—the increased value of the property subsequent to the sale. The result is a loss in both instances.

The total contract-price is \$3,500. The plaintiff is entitled to be credited for payments on the contract with the following sums . . . amounting to \$941, leaving a balance of consideration, exclusive of interest, amounting to \$2,559.

It was contemplated that the plaintiff would make payments by the 15th October, 1912, amounting to \$1,075. After giving the credits above, he has fallen short of this by the sum of \$134; the balance of the \$3,500, namely, \$2,425, was to be paid when the defendant cleared the property of the mortgage to the Huron and Erie Loan and Savings Company.

But the amount required to release the land covered by agreement, on the 1st May, 1912, was \$3,177.67, and had increased by the 15th October, so that, at the time of the alleged default, counting only the cash payments of \$775, the plaintiff had paid more than he was safe in paying, and more than he could be reasonably called upon to pay until the mortgage was reduced. The plaintiff must pay this \$134 shortage, with interest upon it from the 15th October, 1912, as soon as the defendant reduces the mortgage-charge upon the land to the sum of \$2,425, and he should not be called upon to pay it until this is done. . . .

There will be the usual judgment for specific performance, with the costs of the action to the plaintiff, and a reference to the Master at Sandwich to adjust the account and interest, and settle the conveyance in case the parties cannot agree.