

TENDER.

See COMPANY, 4—WILL, 4.

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Computation of—Fraction of day.
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What reasonable notice of putting end to contract.—See SALE OF LAND, 2.

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Covenant by trustee improperly inserted in mortgage—Restriction to foreclosure.—See MORTGAGE, 2.

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VENDOR AND PURCHASER.

1. *Specific performance—Interest on purchase money—Prior action to rescind contract—Suspension of payment of interest.*—An agreement for the sale of land provided that the purchaser was to go into possession and into the receipt of the rents on payment of the purchase money, which was to be paid in twenty-one days from the date of the contract, and upon delivery of the conveyance, up to which events the vendor was to receive the rents, and if, from any

cause whatever, the price was not paid within thirty days from the contract, interest was to be paid by the purchaser. The purchase money was not paid or appropriated, and after a disagreement as to the form of the conveyance, the vendor brought an action and obtained a judgment at the trial rescinding the agreement, which judgment was afterwards reversed and the agreement restored by the Court of Appeal. In the present action, which was by the purchaser claiming specific performance and damages, the vendor was deprived of interest from the trial of his action for the rescission of the agreement until its restoration by the Court of Appeal.

Decision of ROSE, J., at the trial, varied.

The action to rescind might be enough to disentitle the vendor to claim interest pending the action, but the purchaser claimed cross-relief in that action, which would have kept him from paying the price till it was settled: this cross-claim not being abandoned till the trial, when judgment of rescission was pronounced, the payment of interest was not suspended till the abandonment of the cross-claim.

Damages refused in addition to specific performance, they being of a speculative nature. *Hayes v. Elmsley*, 562.

2. *Possession—Payment of interest until conveyance made—Delay in completion—Appropriation of money—Interest at reduced rate.*—In a contract for the sale of land, where possession is taken at once and the contract stipulates for the payment of interest, the purchaser must pay interest from the date thereof, unless (1) there be unreasonable delay in the completion attributable to