

Div'l Court.]

[March 4.

McCORMACK v. LAMBE.

*Sale of land—Delivery of possession—Time essence of contract.*

Land was advertised for sale, with the notification that immediate possession would be given, it being also represented to the plaintiff, who, on the faith thereof, became the purchaser, and signed the contract of sale, whereby the sale was to be completed by the 1st May. It contained a provision that in case from any cause whatever the purchase should not be completed by the 1st May, the purchaser should pay interest upon the whole unpaid purchase money, at seven per cent., from that date until completion of the purchase. A tenant being required to give up possession, proceedings under the Overholding Tenants Act were taken on the 12th April to recover possession, but which failed; whereupon it was agreed that the defendant should eject the tenant, which plaintiff was advised would take a long time. About the 27th April the plaintiff notified the defendant that he was prepared to pay the balance of the purchase money, and would require possession by the 1st May, and that he would attend on the following day for such purpose. On the 28th he did attend, when he was informed that possession could not be given him, and on the 30th April he wrote demanding the return of his deposit by the 2nd May, or proceedings would be taken to recover same.

Held, by MACMAHON, J., at the trial, that by the contract the time for the delivery of possession was made the essence of the contract, and that the plaintiff had in no way waived his right.

On appeal to the Divisional Court, the court was equally divided, and the appeal was dismissed.

*Webb v. Hughes*, L.R. 10 Eq. 281, and *Patrick v. Milner*, 2 C.P.D. 342, considered.

*John Macgregor* for the plaintiff.

*E. D. Armour*, Q.C., for the defendant.

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### Practice.

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BOYD, C.]

• [March 15.

WILSON v. CAMPBELL.

*Mortgage—Action on covenant—Acceleration clause—Judgment—Execution—Payment of interest and costs—Rules 359, 360, 361—R.S.O., c. 107, schedule B., s. 16.*

Where, by virtue of an acceleration clause in a mortgage deed, the whole of the mortgage money has become due by default of payment of interest, and judgment has been recovered by the mortgagee against the mortgagor, in an action solely upon the covenant for payment contained in the mortgage deed, for the whole of the money, the defendant is not entitled, upon payment of interest and costs, to have the judgment and execution issued thereon set aside.