

HON. SIR G. FALCONBRIDGE, C.J.K.B. JULY 15TH, 1912.

FULLER v. MAYNARD.

3 O. W. N. 1602.

Vendor and Purchaser—Contract for Sale of Land—Time for Completion — Extension — Evidence — Notice to Complete — Reasonableness — Right of Vendor to Determine Contract—Specific Performance — Refusal — Discretion — Return of Part of Purchase-money Paid — Costs.

Action by purchaser for specific performance of an agreement to sell certain lands, which defendant had attempted to rescind owing to delay in closing. The sale was to have been closed on September 17th, 1911, but as plaintiff was in England and about to return his solicitors succeeded in postponing completion thereof. On October 14th defendant's solicitors gave notice that they intended cancelling the agreement on October 19th, unless it was closed by that date. On October 24th plaintiff returned home, on October 28th defendants gave notice that the agreement was at an end and on November 10th plaintiff made a tender of the purchase-money which defendant refused. Defendant claimed that plaintiff was not until this latter date in a position to finance the purchase and that he was delaying matters in order that he might turn over his agreement at a profit.

FALCONBRIDGE, C.J.K.B., *held*, that even if defendant had not validly rescinded the agreement, plaintiff was not entitled to specific performance in view of his dilatory conduct and in view of the fact that he had not always been ready and eager to carry out the contract.

Harris v. Robinson, 21 S. C. R. 397, and other cases referred to. Action dismissed with costs save as to the claim for return of the \$500 purchase-money paid on account as to which judgment is given for plaintiff with \$50 costs to be set off against general costs of action.

Tried at Toronto.

Action by purchaser for specific performance of a contract for the sale of land.

G. Kappele, K.C., for the plaintiff.

A. J. Russell Snow, K.C., for the defendant.

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.:—Wherever Messrs. C. Kappele and Nasmith differ in their recollection of what was said either face to face or by telephone, I am bound by law to find the statements of the former not proven. There two witnesses are on the same plane as regards worldly position and demeanour in the box, and there are no compelling outside circumstances to turn the scale in favour of Kappele's statements.