

The plaintiffs, having failed to complete the purchase within the time specified in their oral acceptance, are not, I think, as of right, entitled to specific performance, on the ground that from the nature of the property time should be held to be of the essence of the contract, within the principle of the cases referred to in pars. 1079 to 1083 of Fry on Specific Performance, 4th ed.

I also think that, apart from the question of time being implied as of the essence of the contract from the very nature of the property, the plaintiffs should not be granted specific performance, because the writing bound only the defendant, and the plaintiffs knew that he was anxious to sell the lot, with others, and had other purchasers in sight, and, after their oral acceptance, the plaintiffs unreasonably delayed the completion; and I find that the defendant acted in good faith in selling the property to another purchaser, honestly believing that the plaintiffs did not intend to carry out their agreement.

In Fry, 4th ed., para. 1103, it is said: "Where the contract is in any sense unilateral, as, for instance, in the case of an option to purchase . . . any delay on the part of the party in whose favour the contract is binding, is looked at with special strictness."

In *Earl of Darnley v. London Chatham and Dover R.W. Co.*, 1 DeG. J. & S. 204, it was held that, where a railway company agreed to make such crossings as the land-owner's survey should, within one month, direct and notify in writing to the company or their engineer, and the surveyor did not give any such direction or notification until after the expiration of the stipulated time, the land-owner's right under the contract to have the crossings made was lost. So I think here that, after the time which the defendant voluntarily extended to the plaintiffs for completion of the contract elapsed, the plaintiffs' right to enforce the same was lost.

The action will, therefore, be dismissed with costs.