

get for it. From his standpoint that was not necessary, as he does not claim damages as an alternative remedy.

Then, by the contract, the plaintiff might have asserted his right to retain the \$50 deposited, by exercising the option given him of taking that amount as liquidated damages. The plaintiff has not done that, but insists upon the defendant completing the purchase. The defendant has since the 30th August last rented other lands for his business as market gardener. The plaintiff sought to establish by parts of defendant's examination for discovery, that defendant waived the condition of time being of the essence of the contract.

I prefer accepting the correspondence, as to what was done, rather than the defendant's memory. The defendant is apparently a fair man. He desired to carry out the purchase and to acquire the property for a market garden, and he wanted it by the 15th August. He placed the matter in the hands of his solicitor, and was quite right in being guided by him. The plan proposed was by plaintiff, and presumably for his benefit, in regard to the whole subdivision of part of lot 30. By it a street, or way, or lane might have been laid down and dedicated, which the defendant might regard as to his prejudice. The defendant was entitled to have the proposed plan prepared and registered, or at all events submitted, before he could be called upon to accept the conveyance. The plaintiff was not ready to complete his part of the contract. Even if the plaintiff could, within the time, have compelled the defendant, having no regard to the plan of subdivision, the plaintiff was not ready until after the 15th of August, and, time being of the essence of the contract, the defendant was not bound to accept. In my opinion this is not a case in which specific performance should be ordered.

Judgment will be for the defendant, dismissing plaintiff's action with costs and awarding the defendant \$52.50 upon his counterclaim against the plaintiff.

Twenty days' stay.