

ment of the purchase money, they thereby cancelled the said contract and declared the same void and forfeited any payments already made by the plaintiff. Time was in the contract declared to be of the essence of it.

Held, following *In re Dagenham Dock Co.*, L.R. 8 Ch. 1022, and *Canadian Fairbanks Co. v. Johnston*, 18 M.R. 589, that the contract was not rescinded by such notice, as the plaintiff was not given an opportunity of making good his default.

Held, also, that, even if the notice had in effect cancelled and annulled the contract, the court can, and in this case should, grant relief against the forfeiture and decree specific performance at the suit of the plaintiff.

Scumble. If the agreement had been effectually cancelled by the notice and it was beyond the power of the court to grant relief, the plaintiff could not recover the money he had paid on account as the agreement provided for the forfeiture of any such payments in the event of cancellation.

Phillips, for plaintiff. *Pitblado*, K.C., for defendants.

Metcalf, J.]

[Aug. 3.

TIMMONS v. NATIONAL LIFE ASSURANCE CO.

Practice—Discovery—Examination for—Interrogatories—King's Bench Act, Rule 407b, as enacted by 5 & 6 Edw. VII. c. 17, s. 2.

A party may be required to answer interrogatories delivered pursuant to Rule 407b of the King's Bench Act, as enacted by s. 2 of c. 17 of 5 and 6 Edw. VII., notwithstanding that he has also been ordered to attend and be examined for discovery under Rule 387. *Dobson v. Dobson*, 7 P.R. 256, followed.

Deacon, for plaintiff. *Rebson*, K.C., for defendants.

Province of British Columbia.

COURT OF APPEAL.

Full Court.]

IN RE HOWARD.

[Sept. 10.

Infant—Custody of charitable institution—Religious persuasion—Magistrate's jurisdiction to change order for custody on supplementary evidence.

An order was made by a magistrate awarding the custody of an infant to an undenominational society, but, upon further