

the law will supply the details, it is also well-settled that, if any details are to be supplied in modes which cannot be adopted by the Court, there is then no concluded contract capable of being enforced: Fry, 5th ed., sec. 368. See *South Wales R.W. Co. v. Wythes* (1854), 5 DeG. M. & G. 880; *Bayley v. Fitzmaurice* (1857), 8 E. & B. 664.

No difficulty would, of course, arise as to general form and terms of the mortgage to be given; as, I think, in the absence of any provision to the contrary, the law would imply a mortgage in terms of the Short Forms of Mortgages Act. See Fry, 5th ed., secs. 372-379, and cases cited.

I can find no authority indicating that, in the absence of express provision, the law will imply the terms upon which the principal money of a mortgage, agreed to be given, shall be payable. In sec. 369 of Fry, 5th ed., a number of instances, upon authorities cited in the notes, are given, where it has been held that the contract was incomplete, such as when it was not stated from what time an increased rent was to commence; where the contract did not state, either directly or by reference, the length of the term to be granted; where a contract for a lease for lives neither named the lives nor decided by whom they were to be received; where there was a contract for a partnership which defined the term of years, but was silent as to the amount of capital, and the manner in which it was to be provided.

I think that the matter of when and how the principal money was to be payable was such a material part of the agreement that its omission rendered the agreement incomplete, and that it is impossible by implication to supply the omission; and that, therefore, neither judgment for specific performance nor for alternative damages can be awarded.

The action must be dismissed; but, the defendant having failed to support his charge of fraud, there will be no costs.

BRITTON, J.

APRIL 6TH, 1912.

DULMAGE v. LEPARD.

Contract—Lease of Hotel—Sale of Stock and Furniture—Breach by Vendor—Cash Deposit—Waiver of Tender—Damages—Loss of Estimated Profits—Recovery of Trifling Sum—Costs.

Action for the specific performance by the defendant of an agreement for leasing to the plaintiff the hotel of the defendant