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BRITTON, J.

MAY 4TH, 1903.

CHAMBERS.

EMPIRE LOAN CO. v. McRAE.

*Specific Performance—Contract for Purchase of Land—Judgment for
Payment of Price—Extension of Time—Payment on Account—
Forfeiture—Relief against—Final Order of Sale.*

Appeal by plaintiff from order of Master in Chambers (ante 325) extending the time for payment of the purchase money of land under a judgment for specific performance, and allowing the defendant credit on the purchase money for \$500 paid under an agreement, though under the terms of such agreement the \$500 was forfeited.

C. D. Scott, for plaintiffs.

W. E. Middleton, for defendant.

BRITTON, J.—The question for determination is whether this \$500 is liquidated damages or a penalty. If liquidated damages, it is doubtful if the Court has power to relieve against it under sec. 57, sub-sec. 3, of the Judicature Act, as amended by 60 Vict. ch. 15.

The learned Master thinks this a forfeiture, and I agree with him. Forfeiture is penalty for breach of duty or breach of contract, and that is precisely, in reality, what this is, although in the agreement no such word as penalty or forfeiture is found. Nor is there anything in the agreement about liquidated damages. If not liquidated damages, what is it, if not a penalty? If there were damages, even to a small amount, which by agreement the parties liquidated at \$500, I would not interfere. But here there are no damages.

The agreement is ingeniously so drawn as to enable plaintiffs to retain, without giving credit for it, the \$500, if defendant should not be in time with the balance, and so