

Counsel for plaintiffs state that the omission to refer to these provisions was not intentional. Mr. Robinson added that, in his opinion, they cannot effect the judgment upon the 5th question in the special case. He points out that, before plaintiffs can claim a decree for specific performance by virtue of this special legislation, they must give evidence that the conditions exist which impose obligations upon defendants under their agreement with plaintiffs, and of the nature and extent of the breaches of such obligations, after which, in the exercise of its discretion, the Court is to determine what things, if done or forborne, would constitute a substantial compliance with such obligations, and these things, when so determined, it shall order to be done or forborne.

Counsel for both parties state that the 5th question in the special case was propounded for the purpose of obtaining an adjudication upon the applicability of the decision in the Kingston case—and, should it be held to be in point, a review of that decision.

Had there been no such legislation as is contained in 63 Vict. ch. 102, the question, as framed, would necessarily have involved the determination which the parties avow it to be their desire to obtain. But it must be obvious that, if plaintiffs should make out a case, as outlined by Mr. Robinson, entitling them to the benefit of this special legislation, it will be wholly unnecessary to consider the applicability or the authority of the decision in *City of Kingston v. Kingston Electric R. W. Co.*, 25 A. R. 462. Upon a special case stated in an action only such questions of law can properly be raised as must sooner or later arise in the action: *Republic of Bolivia v. National Bolivian Navigation Co.*, 24 W. R. 361.

To answer the 5th question so as to meet the real purpose of the parties in presenting it, I should be obliged to assume that plaintiffs will fail to establish facts entitling them to invoke the special statutory provisions of 63 Vict. ch. 102. On the other hand, taking these provisions into account, at best only a hypothetical answer can be made to this question. It will be time enough to determine whether the remedy of specific performance is open to plaintiffs under the statute when they have established a case to which the statute applies; time enough to consider their right to this relief apart from the statute, when it becomes clear that the statute has no application. At present the question propounded cannot be answered without disregarding the well