

That eminent civilian and equity Judge, Strong, J., says in *Harris v. Robinson*, 1892, 21 S. C. R., at p. 397, that "the exercise of the jurisdiction is a matter of judicial discretion, one which is said to be exercised as far as possible upon fixed rules and principles, but which is nevertheless more elastic than is generally permitted in the administration of judicial remedies. In particular it is a remedy in the application of which much regard is shewn to the conduct of the party seeking the relief," and further on p. 404: "The rule which governs the Courts in giving relief by way of specific performance of agreements even in cases in which time is not made of the essence of the contract, is that a plaintiff seeking such relief must shew that he has been always ready and eager to carry out the contract on his part."

*Lamare v. Dixon*, L. R. 6 H. L. 423, and *Coventry v. McLean*, 22 O. R. at p. 9.

Judged by these standards the plaintiff fails to qualify himself to invoke the interposition of the Court by way of specific performance, even if the other issues involved were decided in his favour, e.g., if there were no valid rescission by defendant.

Therefore, I will not decree specific performance, and as to this, his action stands dismissed.

But he will have judgment for the \$500 paid on account. This was in the present state of the real estate market a minor, nay an inconsiderable side issue. The disposition of the costs will, therefore, be that defendant shall have full costs minus the sum of \$50 representing costs of the issue as to the \$500. Defendant will retain the balance of his costs out of the \$500.

Thirty days' stay.