

Britton, J.] EMPIRE LOAN AND SAVINGS CO. v. McRAE. [May 14.

Validity and forfeiture—Liquidated damages—Sale of land—Specific performance—Extension of time for payment.

After judgment in an action by the vendors of land for specific performance and before issue of the same, the vendors agreed to extend the time for the payment of the purchase money for three months, upon the terms of the purchaser paying down \$500, which extension was embodied in the judgment, and it was agreed between the parties as follows: "If the defendant shall pay the balance of the purchase money within the time limited by the judgment, the plaintiff shall give credit to the defendant upon the said balance for the said sum of \$500, but if the defendant shall fail to make payment of the said balance within the time limited by the said judgment, then, the plaintiff shall not be bound to give credit to the defendant upon the said balance for the said sum of \$500, and in this respect time shall be of the essence of the contract." A few days after the expiry of the time limited by the judgment, the purchaser tendered the purchase money less \$500, which the vendor refused to accept.

Held, that the above provision was of the nature of a forfeiture and not of liquidated damages, and the purchaser was entitled to be relieved from the terms of the judgment and to have a conveyance of the property upon paying the balance due after credit given for the \$500.

C. D. Scott, for vendor. Middleton, for purchaser.

Falconbridge, C. J. K. B., Street, J., Britton, J.]

[May 18.

HEFFERMAN v. TOWN OF WALKERTON.

Municipal law—Procedure by-law—Subsequent by-law passed in disregard of its provisions—Merits—Court's discretion.

The Mayor of a town had a member of the Town Council removed from the council chamber for disorderly conduct. The Councillor brought an action against the Mayor which was tried and dismissed with costs which costs the Mayor was unable to collect. The Council with a view to provide him with funds to pay the costs in June introduced a by-law for \$125 "to remunerate the Mayor for the present year." In September the Council in passing the estimates included an item of \$300 for "Law costs, etc.," which the defendants said was known to be intended to cover the \$125 and the plaintiff denied. In December a resolution was passed that the by-law be read a second and third time, passed, signed and sealed. The by-law was not submitted to a committee of the whole, which objection was taken at the time by the plaintiff although it was submitted to the Finance Committee who reported "that funds for the same be reported from the general funds" which report was adopted by the Council and the