

performance would lie, or to compel the lending of the money contracted for. The House of Lords confirmed this judgment, and Halsbury, L.C., stated:—

"The forms which have been contrived for the business of Joint Stock Companies, and which, when applied to their proper purpose, are convenient, are somewhat calculated to mislead when their mere language is recorded. The application for debentures on the face of the instrument, asks to pay something. But the real nature of the whole transaction is an agreement of the applicant to lend money at a certain interest, and the action in this case was, in truth, mainly, if not altogether, instituted to compel the intending lender to perform his contract to lend, which, doubtless, he had refused and neglected to do. With respect to the claim for specific performance, a long and varied course of decisions has prevented the application of any such remedy, and I do not think that any Court or any member of any Court has entertained a doubt but that the refusal of the learned Judge to grant a decree for specific performance was perfectly right." ([1898] A.C. 312.)

See, to the same effect, *West Waggon Company v. West* ([1892] 1 Ch. 271); *Parker & Clarke, Company Law*, p. 119; *Mulvey*, p. 94; *Masten*, p. 165.

Art. 1065 of the Civil Code, Que., lays down a similar rule: "Every obligation renders the debtor liable in damages in case of a breach of it on his part. The creditor may, in cases which admit of it, demand also a specific performance of the obligation, and that he be authorized to execute it at the debtor's expense, or that the contract from which the obligation arises be set aside; subject to the special provisions contained in this code, and without prejudice, in either case, to his claim for damages."

It has always been properly held that a plaintiff cannot come into Court for the purpose of having the defendant constituted his creditor, and this is virtually what a demand to enforce specific performance of a contract of loan amounts to. The only remedy, under Quebec law, is an action in damages, because, in that event, the plaintiff is properly bringing his claim as creditor of the defendant, who, by his breach of covenant, has become liable in damages, if any result, and therefore has become the debtor of the plaintiff.

In England, following the *Vallington* decision of the House of Lords, the law was amended, specifically giving companies the right to enforce specific performance of subscriptions for debentures. At the present day an action of the nature of the case just reported would lie, but, as the law has not been changed in Canada, or in the Province of Quebec, such an action cannot be recognized.

It may be noted that the different Companies' Acts in this country provide for the specific performance of the contract whereby a subscribing shareholder agrees to take stock in the company.