

can be regarded as an authority for the plaintiffs' contention, although there are some expressions of opinion that some form of special damage might be recovered. See *Bahama Sisal Plantation Co. v. Griffin*, 14 Times L. R. 139, where the South African case was cited.

In any event it was not shewn that the plaintiffs could not in February, 1907, have obtained the money elsewhere, had united and persistent effort been made. It was then that the plaintiffs knew that the bank would not make the advance, and the reason for the plaintiffs not being able to obtain the money in August was because of the changed conditions of the money market; the like conditions did not exist in February.

The plaintiffs are in this additional difficulty on the question of damages. They say the agreement was that the bank was to make the advance at "current rates;" this would mean an increase from time to time upon renewals, if the rate of discount advanced; so if the plaintiffs had made application for and obtained the money elsewhere, at or about the time the bank refused to make the advances, the rate payable by them elsewhere would have been the same rate the bank would have been entitled to charge, and so there would have been no damage.

I think the plaintiffs' case fails, and the action must be dismissed with costs.

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DECEMBER 3RD, 1907.

DIVISIONAL COURT.

CUMMINGS v. DOEL.

*Vendor and Purchaser—Contract for Sale of Land—Completion of Houses by Vendor—Purchaser to have Right, on Default of Vendor, to Complete and Deduct Price from Balance of Purchase Money—Payment of Balance of Cash—Refusal of Purchaser to Deliver Mortgage for Part of Price, Houses being Incomplete—Action for Declaration of Rights—Mandatory Order for Delivery of Mortgage—Lien—Costs.*

Appeal by defendant from judgment of BRITTON, J., ante 331.

T. D. Delamere, K.C., for defendant.

A. B. Armstrong, for plaintiff.