

The facts are set out in the judgment of the Chief Justice.

The following authorities were relied on for plaintiff:—

Fry, Spec. Perf., 4th ed., secs. 335 and 632. *Parkes v. Taswell*, 2 DeG. & J. 559, at page 571. Fry, Spec. Perf., 578 et seq. *Lavery v. Pursell*, 39 Ch. D. 508. Fry, secs. 53 and 1578 et seq. *Homfray v. Fothergill*, L. R. 1 Eq. 567. See cases cited Fry, page 22 (3).

Defendants relied on:—

Section 7, s.-s. d. of cap. 141, R. S. N. S. *Leake on Contracts*, 4th ed., pp. 197-8. Fry, Spec. Perf., 4th ed., sec. 634, p. 277. *Lindsay v. Lynch*, 2 Sch. & Lef. 1. *Price v. Salusbury*, 32 Beav. 446. Also Fry, Spec. Perf., sec. 613, p. 269, and sec. 580, p. 256.

TOWNSHEND, C.J.:—This is an action for specific performance and damages for breach of contract. The plaintiff became largely indebted to the defendant company for which the company held a judgment, owned security on personal property as well as an assignment of a life policy. The plaintiff being unable to meet this large indebtedness an agreement in writing was made between the parties on the 23rd day of July, 1907, as set forth in the statement of claim, for "the settlement in full to date of all matters outstanding between the said parties, debts, accounts, notes, judgments, mortgages, bills of sale, life policy and other securities," the consideration of which was thirteen thousand dollars to be paid by plaintiff, for which he gave his promissory note to the defendant company payable in three months at the Royal Bank. The defendant company on payment of the said note agreed to accept that sum in full for all its claims against plaintiff, and to transfer to plaintiff all the securities then held by them for the said debt and release all judgments, mortgages or other liens held by it, and plaintiff agreed to pay legal costs due Hugh McKenzie and Henry Dickie for collecting notes.

The note would fall due on the 17th October, 1907, and plaintiff was unable to meet it. Plaintiff says that on or about that date he entered into another agreement with the defendant company, by which the company in consideration of his conveying to it certain real estate at Shubenacadie and other places, a mortgage for \$2,500 on the old place at Shubenacadie, four promissory notes for \$125 each made