

Beer had not money with them for the purpose of making any formal payment or tender; but I find that if Lea had been present, Mr. Beer was prepared to make the cash payment. He did not have the money standing to his credit in his bank, but he had securities deposited with the bank entitling him to draw to an amount exceeding that required.

Lea had in the meantime learned of the plans of the Canadian Northern Railway, and was satisfied that he could sell the lands to the company at a much larger price. He had the view that the option expired at 4.00 p.m., it having been signed at that hour; and he deliberately refrained from attending at the place named, for the purpose of evading the receiving of any communication of the acceptance which he anticipated would then be made.

Doolittle was of the view that he had until midnight of the thirteenth to accept. He telephoned Lea at 6.30 p.m., asking an explanation of his failure to attend. Lea then told him that the option expired at 4.00 o'clock and he would have nothing further to do with him.

What then took place I think amounts to a revocation of the offer, and an intimation by Lea that he would no longer sell.

Dr. Doolittle, for the purpose of accepting the offer within the time limited (in his view of the meaning of the option) wrote and mailed a letter to Lea enclosing a marked cheque for five thousand dollars and accepting the offer.

This was not an adequate acceptance, because the contract did not contemplate acceptance by mail. The letter did not reach Lea until after the expiry of the option, upon either theory. Five thousand dollars was the amount of the marked cheque, because in course of the negotiations which took place on Monday, some willingness had been expressed on the part of Lea to assent to a variation of the terms of the sale by reducing the cash payment from \$10,500 to \$5,000. At the time the cheque was marked, Dr. Doolittle did not anticipate any attempt on the part of Lea to prevent the transaction being carried out, and anticipated that the five thousand dollars would be all that would be required.

Fearing that the mailing of this letter and cheque would not be sufficient, Dr. Doolittle went to Leaside and met Lea, well on in the evening, and then gave him a letter accepting the offer together with an unmarked cheque for \$10,500. These were not accepted by Lea, who insisted that the option was at an end at 4.00 o'clock, and who further refused to regard the cheque as payment.