

would see the solicitor that evening. Defendant did not on 14th or 15th February complain of plaintiff's not giving such a letter as above mentioned, or refer to that letter or its absence.

On 15th February the solicitor sent to defendant an accepted cheque on Dominion Bank for \$275 enclosed in a letter. This letter was returned unopened, and the solicitor then mailed it. It was addressed to defendant, and is as follows: "Re Sale Bloor Street Property to Bowerman:—I beg to enclose herewith my marked cheque for \$275, being amount payable to day on property on Bloor street purchased by F. D. Bowerman from you. I further beg to say that Mr. Bowerman called at my office after you had left this morning and advised me that he had sold a portion of this property, and he expected to be able to pay you the balance in full within the next 30 days. Under the circumstances, I would suggest that the deed be prepared, instead of any interim agreement, and I shall advise you at once when the balance of the money will be paid over."

On the morning of 16th February defendant wrote to plaintiff's solicitor as follows: "Re Sale Bloor Street Property to Bowerman:—Your letter received this morning enclosing cheque for \$275, being part of the money payable under agreement yesterday. This cheque I refuse to receive for various reasons, not being a legal tender, and the time having elapsed for payment under the agreement. I therefore rescind the agreement for sale and return the said cheque herewith and also cheque for \$25 which was handed to me by Mr. Ponton in the presence of W. O. McTaggart, the agent for Mr. Bowermon, your client."

This letter does not complain of the absence of a letter from Bowerman about building or commencing to build.

The 16th February was Saturday. On the Monday following, on plaintiff's behalf, the solicitor formally tendered to defendant the \$300 in cash and an agreement such as is provided for in offer and acceptance, but defendant refused to accept the money or execute the agreement. He said he had rescinded the agreement, and would fight it out. This action was then commenced; the writ issued on 18th February.

As stated, I do not think time was made of the essence of this agreement after the offer was accepted and the agreement a completed one. If the offer was not accepted by the