

and give you back a first mortgage on the property for the remainder," contained in the offer of the plaintiff, indicates that the offer made contemplated that the purchaser was to follow the usual rule in that regard.

On the 15th March, the date of closing, the purchaser was, in my opinion, in default: (1) in not having prepared and tendered the deed to the vendor for execution; (2) in not having made a tender of the further cash payment of \$2,000; (3) in not having obtained from the vendor a mortgage, in his solicitor's usual form, and prepared, executed, and tendered such a mortgage for the remaining \$5,000 of the purchase-money.

He had proposed and agreed in his offer, accepted by the vendor and constituting the contract, that time should in all respects be strictly of its essence. The vendor was consequently quite within his rights on the 18th in declining to go on with the contract and declaring the transaction at an end.

This is not a case in which the plaintiff was let into possession and spent money on the property. It is a case in which the parties, on the face of their agreement, contemplated the completion of the transaction on a day certain, and in which the plaintiff, through his solicitor, had explicit notice that the defendant wanted it completed on that day, according to the terms of the agreement. The defendant was not in default in any way, and he did not in any way waive the express condition as to time. The plaintiff was in no way ready on the day named to complete the transaction; that was not the defendant's fault. He could stand upon his rights under the contract and consider and declare it to be at an end.

The defendant, it is true, prepared a draft deed. I am of opinion that, under the contract, he was not required to do so. Because voluntarily, and either to expedite the completion of the transaction on the day named, or through an erroneous conception on his part, he prepared the draft deed, which he was not required to do under the contract, is the plaintiff, on that account, to be put in a better position as to time than though the defendant had not so prepared the draft deed? I cannot think that he should be. But, in any event, the draft deed so prepared was not returned in time, though asked for and promised.

[Reference to *Labelle v. O'Connor* (1908), 15 O.L.R. 519.]

There is no pretext that there was any fraud, accident, or mistake in the preparation of the contract or the insertion therein of the explicit term as to time being of its essence.

With great respect, therefore, I am of opinion that no decree