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HON. MR. JUSTICE LENNOX.

JUNE 9TH, 1913.

DAHL v. ST. PIERRE.

4 O. W. N. 1413.

*Vendor and Purchaser—Specific Performance—Attempt to Rescind
—Time of Essence—Waiver—Account—Reference.*

LENNOX, J., held, that where time is made the essence of the contract, this provision is waived by recognition of the contract by the party entitled to insist on such provision after the expiry of the time provided for by such contract and thereafter in order to cancel the same reasonable notice must be given of a time within which the contract must be completed.

Webb v. Hughes, L. R. 10 Eq. 281, referred to.

Action for specific performance of contract to sell to plaintiff parts of lots 7 and 8 in the Lake Shore Range lots, township of Rochester, county of Essex, for \$3,500.

M. K. Cowan, K.C., for plaintiff.

F. D. Davis, for defendant.

HON. MR. JUSTICE LENNOX:—The plaintiff is entitled to specific performance of the agreement sued on. Time is in terms made of the essence of the contract, but this is not open to the defendant as a defence. After the default now complained of the defendant continued to negotiate with the plaintiff and recognised the continued existence and validity of the contract. Having once done this he cannot afterwards hold the plaintiff to the original stipulation as to time. *Webb v. Hughes*, L. R. 10 Eq. 281. Once the time is allowed to pass the rights of the parties are governed by the general principles of the Court. *Upperton v. Nicholson*, L. R. 6 Ch. App. 436. And the defendant could not in these circumstances terminate the contract abruptly as he attempted to do by the letters of 20th and 27th of January,