

adjustment, \$845.43, and also paid some small correction in the computations, \$1.60. The cheque was handed to Mr. Wherry, who also received the mortgage for the purchase-money. The deed was handed to Mr. McBrady. A memorandum was made embodying the understanding that the deed should not be registered until the cheque was marked on the 22nd, and that the cheque should not be used until the necessary search at the time of registration was made.

Upon returning to his office, Mr. Wherry communicated with the bank and learned that only a small amount stood to McBrady's credit. He then realised that he had been imprudent in parting with the deed for a cheque which he believed to be worthless; and, returning to McBrady's office, accused him of defrauding him by giving a cheque for which there were no funds, as McBrady knew. McBrady did not deny the condition of his bank account, and **surrendered the deed, receiving back his cheque.** In the confusion Mr. Wherry forgot to hand back the second mortgage, although he had taken it to McBrady's office for that purpose. Later on, he returned it.

On the 22nd, McBrady made no deposit in the bank, and his cheque still remained worthless, and would have been rejected had it been presented, instead of being returned. Mr. Wherry then (22nd April) wrote a letter definitely and finally stating that the transaction was at an end, and that nothing further would be done.

On the 23rd, McBrady wrote letters seeking to re-open the matter, which were ignored by Mr. Wherry; and on the same day McBrady procured the bank to mark his cheque as good. There is nothing to indicate that he ever communicated this fact to the vendor or his solicitor. There was some unsatisfactory evidence looking towards tender, but no tender was made. The cheque that was marked on the 23rd April was redeposited and cancelled on the 25th, so that it could not have been a factor in these supposed tenders. The purchaser apparently accepted the situation, and entered into negotiations looking for some salvage from the sale deposit. Unfortunately these came to nothing. Mr. McBrady registered the agreement and brought this action, which has dragged its weary way through the Courts ever since notwithstanding an order made on the 2nd June, 1913, to expedite the hearing.

It is argued that, although time was of the essence of the contract in the first place, the parties treated the contract as subsisting after the date fixed, and that the notice of the 17th, de-