

p.m. to close the matter. Neither the vendor nor the purchaser kept this appointment. The solicitor had not been placed in funds. At 3.30, or a little later, the vendor went to the office, dramatically produced deeds from the Title and Trust Company to the purchaser, and demanded the money and an undertaking from the solicitors that the purchaser would execute the conveyance. The purchaser not being there, the solicitors stated that they would try to reach him by telephone, and asked the vendor to call later. The endeavours of the solicitors to find the purchaser were unsuccessful. At 4.30, the vendor returned; again he produced the deeds; and, the money not being forthcoming, said that he called the transaction off.

On each occasion, the purchaser was accompanied by a clerk from the Title and Trust Company, whose instructions did not permit him to part with the conveyances unless the money was paid and the deed signed by the purchaser, or an undertaking received from the solicitor that it would be so signed. The vendor had given his own cheque to the Title and Trust Company, but it was worthless until the purchase-price was deposited to meet it. The next day the balance of the purchase-money was tendered and refused. This action followed on the 13th March.

*Foster v. Anderson*, 15 O.L.R. 362, shews that, where the deed is to be given at the expense of the vendor, it is the duty of the vendor to prepare the deed. In this case, the vendor, not having submitted a draft deed, and not having complied with the request made to him in the letter of the 10th March, to hand the deed to the purchaser's solicitors for execution by the purchaser, "this being necessary because of certain covenants in the nature of building restrictions," was himself in default. Apart from this, the deed tendered was not in compliance with the contract. It would, no doubt, operate as a good conveyance; but the purchaser was entitled to have the vendor's own covenants, and was only bound to covenant with the vendor and not with the Title and Trust Company. The difference between the deed tendered and the deed to which the purchaser was entitled may or may not be material; but, before the purchaser can be regarded as in default, the vendor must be himself blameless with respect to matters concerning which the onus is upon him.

In *Boyd v. Richards*, ante 1415, I have discussed the effect of the recent decision in *Kilmer v. British Columbia Orchard Lands*