

his vendor to have removed it had he been able to have paid him the balance due under his agreement; this apparently he was unable to do, or at any rate was unwilling to do. The action, in my opinion, should be dismissed with costs."

The defendant Dunmore authorised Moffat to sell for him two lots on the south side of Victoria avenue; the number is not given. A formal agreement was drawn up between the defendant Moffat and the plaintiff in which Moffat agreed to sell to the plaintiff 95 feet, more or less, on the south side of Victoria avenue, in the village of Weston, at seven dollars per foot, cash. This agreement provides that the purchaser be allowed twenty days to investigate the title, and if within that time he should furnish the vendor any valid objection to the title which the vendor shall be unable or unwilling to remove, the agreement shall be null and void and the deposit returned to the purchaser. Time to be of the essence of the agreement.

This agreement was not signed by Moffat, but was signed by one G. M. Fraser, who appears to have been a clerk in Moffat's office, or interested with him. A cheque was given upon the purchase on the same date for \$25. The receipt given by Moffat to the plaintiff is as follows:—

" March 27th, 1912.

"Received from D. G. Dixon deposit \$25 on 95 feet of land, more or less, on south side of Victoria avenue."

It appears that Dunmore owned but one lot or 50 feet on the south side of Victoria avenue in the village of Weston, and on the 29th March, 1912, Moffat wrote to Dunmore for the number of the lot, to which Dunmore replied as follows:—

" West Toronto, March 29th, 1912.

"In reply to yours of to-day re ground at Weston, the number is lot 2. Yours faithfully, H. W. Dunmore."

"P.S.: Dear Sir,—Will you kindly let me know the full name of the purchaser as I can have his name put on the deed instead of mine, as it will save me a transfer. Yours, etc., H. W. Dunmore."

Dunmore had purchased lot 2 from defendant Taylor on the 1st November, 1909, for \$250, \$25 down and the balance in half yearly instalments of \$25 each with the option to the purchaser of paying off the balance of the purchase money at any time. The plan was afterwards registered. There was no difficulty as to the outstanding mortgage as Taylor stated he