

current action was contemplated, and was necessary on the part of both solicitors.

The defendant, however, did take action *ex parte* in getting a conveyance executed, but kept this from the knowledge of the plaintiff's solicitor. A deed was sent to the defendant (who was then in Texas) some time in the beginning of October, and was executed by her on 6th October, and was in the hands of the defendant's solicitor about 8th October. The draft of this deed should have been submitted, for, simple though the conveyancing be, the deed is drawn incorrectly in making the \$5,500 payable in cash, whereas part of it, \$4,000, was to be secured by a second mortgage—a prior mortgage to the Messrs. Foster being assumed by the purchaser.

However, this relation of facts justifies the conclusion that the blame for delay rests on the defendant, and not on the plaintiff. It would be "a monstrous injustice" that one who has not complied with a stipulation as to time should seek to enforce the strict observance of it on the other side, who has been diligent. In truth, the essential limit is thus removed, and the course of dealing in completing the transaction rests on the general principles of the Court: *Upperton v. Nicholson*, L. R. 6 Ch. 443.

I think the grounds upon which the learned Judge proceeded in dismissing the action are not tenable.

But on the appeal the defendant sought to support the judgment on two other grounds: (1) that the plaintiff's agent had been guilty of misrepresentation of a material fact; and (2) that there is no contract enforceable, having regard to the Statute of Frauds.

As to misrepresentation, it is not proved. The statement relied on as such was made in a letter by the agent of the vendor and not of the purchaser, and it was a statement of what had occurred, according to his recollection, in an interview with the defendant's solicitor. The trial Judge accredits the evidence of Hill, this agent, and that ends the matter. The real reason why the defendant was desirous to get out of the contract was because the place was better rented than she supposed to be the case when she signed the acceptance.

As to the Statute of Frauds, the objection is that the lot so'd is described as lot 22 in the offer signed, whereas the true lot is No. 24, in Ann street, in the city of Toronto. It is designated as part of park lot 8 and "known as 22 Ann