

February, 1901, and no new date for completion was substituted. The plaintiff was then freed from the obligation of completing the contract on 15th February, 1901, and became subject to a new obligation to complete it within a reasonable time. The defendants, having waived their right to rescind the contract in case of non-completion on 15th February, 1901, were entitled only to insist that there should be no unreasonable delay; and in case the plaintiff should unreasonably delay the completion they might have given him a notice to complete within a reasonable time to be fixed by them or that they would treat the contract as rescinded. But such a notice could only be given after the plaintiff had been guilty of unreasonable delay, and could not be given in anticipation of such delay. The authorities upon this question are collected in *Green v. Seven*, 13 Ch. D. 599.

The notice relied on by the defendants as fixing a peremptory day for completion is the letter of Mr. Vandervoort to the plaintiff's solicitor of 20th February, 1901. That letter appears to have been written under the mistaken idea that the letter of 15th February, 1901, had not affected the defendants' right to insist upon a strict performance of the contract. It may, however, be treated as a notice to the plaintiff that if he failed to complete the matter by 1st March, the defendants would consider themselves at liberty to treat the contract as at an end. But the plaintiff down to the date of the letter had not been guilty of any unreasonable delay, and so there was no right in the defendants peremptorily to fix a new day for completion, and Mr. Vandervoort's letter of 20th February did not entitle the defendants to forfeit the contract on 1st March.

The defendants, therefore, in my opinion, were not justified in refusing to complete the contract when the plaintiff pressed for completion on 2nd March, and the plaintiff is entitled to succeed. The appeal should, in my opinion, be allowed with costs, and the plaintiff should have the usual judgment for specific performance, with costs to the trial inclusive. Further directions and subsequent costs reserved till after report.

BRITTON, J., referred as to waiver to *Harris v. Robinson*, 21 O. R. 43, 19 A. R. 134, 21 S. C. R. 390; as to making time the essence of the agreement by notice, to *Green v. Seven*, 13 Ch. D. 589; as to delay after waiver, to *Macdonald v. Elder*, 1 Gr. 513, 526; as to reasonableness of notice and its terms, to *Compton v. Bagley*, [1892] 1 Ch. 313, *Reynolds v. Nelson, Meddows & Geldert's R.* 18,