

The notice given on the 19th June, 1916, purporting to make time of the essence of the contract, so as to enable the appellant to treat it as at an end at the expiration of 10 days, was superseded by the subsequent acts of the appellant in tendering the conveyances on the 30th June and 7th July, 1916.

Even if that were not so, the period of 10 days was too short a time to give the respondent, in the circumstances then existing.

Up to the 29th June and indeed until the commencement of this action on the 28th July, 1916, the appellant was ready and willing to accept a conveyance of the land, in fulfilment of the contract. Since the 1st June, 1916, time was not of the essence, and the notice did not make it so; and the appellant had been properly held bound to carry out the contract, upon the terms stated in the judgment below.

The contention that the restrictions as to buildings upon the land were such as the appellant was not bound to accept was answered by the provisions of the contract, as well as by the fact that their existence was not made a reason for refusing the deeds. The agreement of the 19th February, 1915, provided that "the existing covenants that run with the lands or any restrictions on the lands and present tenancies are to be accepted." Nothing was said about the restrictions from March, 1915, till the conveyance from the respondent's vendors was obtained; and, having declined to carry out the contract solely on account of delay, the appellant lost the benefit of this subsidiary objection, even if the contract did not preclude him from insisting upon it.

The appeal should be dismissed with costs.

MACLAREN, J.A., LATCHFORD, J., and SUTHERLAND, J., agreed with HODGINS, J.A.

FERGUSON, J.A., took no part in the judgment.

*Appeal dismissed.*

FIRST DIVISIONAL COURT.

APRIL 16TH, 1918.

\*JUDSON v. HAINES.

*Negligence—Collision of Motor-vehicles in City Highway—Proof of Negligence—Onus—Evidence—Findings of Jury—Form of Questions—Contributory Negligence—Ultimate Negligence.*

Appeal by the plaintiff from the judgment of RIDDELL, J., upon the findings of a jury, in favour of the defendant, dismissing