

mining properties in question in this action, or an absolute contract for their purchase; secondly, whether, if it is an option, there was, by virtue of the letter of the 6th May, 1908, an extension given of the time, viz., 12 months from the 6th May, within which the option was to be exercised and the election to become a purchaser made; thirdly, if there was an extension, whether the right was exercised and the election duly made in accordance with the terms of the instrument and letter within the extended period; and fourthly, if the answer be in the affirmative, whether there was such a tender of and refusal to accept the instalment of \$37,500 as to entitle the defendants to claim specific performance from the plaintiffs.

As to the first question, the Chief Justice said, it seemed very clear that the instrument of the 6th May, 1908, was not only intended to be, but in its essence was, nothing more than an option to buy.

As to the second question, the Chief Justice said: As I read the letter of the 8th May, it means only that, provided the defendant Marshall made and signified his election to purchase in such way as to become bound to carry out the terms of purchase, then, instead of being required to pay on the day named in the instrument of the 6th May, he was to have sixty days' grace. If this be the proper conclusion, it ends the defendants' case, for it is conceded that there was no exercise of the option within 12 months. See *Dibbins v. Dibbins*, [1896] 2 Ch. 348. . . .

With regard to the third, I am of opinion that, assuming that the time for exercising the option was extended, there was within the extended period an election to purchase and a sufficient signification thereof to the plaintiffs. . . .

There was not actual payment, and the last question is as to the sufficiency of the tender made. It is said that the plaintiffs waived or dispensed with the necessity for tender. . . . Nothing had been done that dispensed with the duty of the defendants Marshall and the Grey's Siding Development Co. to make payment or proper tender if they desired to retain the benefit of the agreement. . . . There was no essential reason why the money should not have been paid over to the Royal Trust Company. The nature of the properties and the circumstances under which the defendant Marshall held a right to purchase them rendered it a case in which he and his co-defendants . . . were bound to comply strictly with the terms and conditions under which they became entitled to purchase. This they failed to do, and were, therefore, not entitled to judgment for specific performance as awarded by the trial Judge.