by any company, having an agency in Ontario, by registered letter addressed to the assured at his last post-office address notified to the company, and where no address notified, then to the post-office of the agency from which application was received, and where such notice is by letter, then seven days from the arrival at any post-office in Ontario shall be deemed good notice. And the policy shall cease after such tender and notice aforesaid, and the expiration of the five or seven days as the case may be."

The defendants' agent called on A., who was insured under a policy of fire insurance in the defendants' company, and handed him a letter written by himself, stating that the company "have instructed me to cancel their policy 2,862,361, held by the Bank of Commerce, and I therefore send you herewith $13.75 for unearned premium on same."

The agent said that on handing A. the letter he took the money out of it, counted it over, and laid it down beside the letter, and when A. refused to receive the money he (the agent) said he had no alternative but to tender it. He also said that he told A. that he had, under the conditions of the policy, a limited time to replace the insurance.

Held, GALT, C.J., dissenting, that the letter was not a sufficient cancellation of the insurance within the meaning of the condition; that the condition required written notice; and such notice must state that the insurance would be cancelled on the expiration of five days, whereas here the notice was of an immediate cancellation; and also that the rateable proportion of the premium for the unexpired term should have been calculated from the termination of the notice.

Caldwell v. *Stadacona Fire and Life Insur. Co.*, 11 S.C.R. 212, commented on.

Quære, per ROSE, J., whether the letter was anything more than a notice of the agent's instructions.

Lash, Q.C., for the plaintiffs.

Bain, Q.C., for the defendants.

PAXTON *v.* SMITH.

Statute of Limitations—Defendant maker of note and sole executor of surety—Payment by defendant on his own account.

The defendant, who was the maker of a promissory note and also the sole executor of the surety thereto, out of his own money and on his own account only, within six years before action was brought, paid interest on the note.

Held, that such payment had not the effect of taking the note out of the Statute of Limitations as regarded the surety's estate.

Scane, of Chatham, for the plaintiff.

Pegley, of Chatham, for the defendant.

Chancery Division.

ROSE, J.] [Sept. 21.

OLDFIELD *v.* DICKSON.

Time the essence of a contract—Offer to sell land—Acceptance—Net price—Reasonable time to pay money.

Time may be of the essence of a contract even without any express stipulation, if it appears that such was the intention.

Defendant wrote his agent on March 25th, "If O. (plaintiff) still wants that farm . . . . . he can have it for $150 net, provided it can be arranged at once. Kindly advise me . . . . . if he accepts, and when he will pay the money over." Ten days after (April 6th) the agent telegraphed defendant, "O. will take the farm, will pay the money in two weeks." On April 11th defendant telegraphed, "Your offer of 6th comes too late."

Held, that an arrangement between defendant and his agent as to the latter's commission would not affect the *net* price as between plaintiff and defendant.

Held, also, that the enquiry, "When he will pay over the money" showed an intention to give a reasonable time for such purpose, and that under the circumstances two weeks was not an unreasonable time. But

Held, also, that the acceptance of defendant's offer was not in time.

Crossfield v. *Gould*, 9 A.R., 318, referred to.

Pepler and *J. H. Bowes* for plaintiff.

Hewson for defendant.

Practice.

BOYD, C.] [Oct. 23.

GRAHAM *v.* DEVLIN.

Judgment debtor—Examination of—Unsatisfactory answers—Motion to commit—Re-examination—Evidence—Rules 928, 932.

Upon a motion to commit the defendant for