Held, MEREDITH, C.J.C.P., dissenting, that, in the absence of fraud, accident or mistake, the provision that time should be of the essence was binding upon the plaintiff, and had not been waived by the defendants; that the latter had the right to rescind upon default in payment of the second instalment; that no formal notice of rescission was necessary; and that the plaintiff was not entitled to specific performance. *Barclay* v. *Messenger* (1874), 22 W.R. 522, 43 L. J. Ch. 449.

In re Dagenham Dock Co. (1873), L.R. 8 Ch. 1022, and *Cornwall* v. *Henson*, (1899) 2 Ch. 710, (1900) 2 Ch. 298, followed.

Held, also, that the $100 paid by the plaintiff, not being a deposit, but an instalment of the purchase money, was not forfeited, but was returnable to the plaintiff upon rescission, and he should be allowed credit for it upon the costs ordered to be paid by him.

Judgment of TEETZEL, J., reversed.

Gamble for defendants. *J. Bicknell*, K.C., and *A. B. Morine*, K.C., for plaintiff.

Meredith, C.J.C.P., MacMahon, J., Teetzel, J.] [Jan. 20.

IN RE WILSON AND TORONTO GENERAL TRUSTS CORPORATION.

Executors and trustees—Accounts—Surrogate Court—Approval by judge—Fraud or mistake—Items of overcharge—Application to re-open accounts—Re-opening limited to items proved—Refusal to re-open generally—Surrogate Courts Act—Jurisdiction—Costs.

A petition by the cestui que trust to the judge of a Surrogate Court to set aside an order made by him upon the passing of the accounts of the trustees and to re-open the accounts, was dismissed with costs, subject to the petitioner being allowed to surcharge the accounts of the trustees upon two items, viz., premiums paid by the trustees for fire insurance, from which they should have deducted rebates or commissions allowed to them by the insurance companies, and an overcharge of one cent a share upon a purchase of 3,000 shares of mining stock by the trustees:—