

To this Mr. Swayzie immediately replied that he had been ill, and only able to attend to the most urgent matters; he denied the vendors' right to rescind, and offered to carry out the contract at once, tendering the money and a conveyance. The vendors refused to proceed further with the matter, and the present action was brought on the 15th March, 1901, asking for specific performance of the contract.

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S. H. Bradford, for plaintiff.

T. Mulvey, for defendants.

STREET, J. (after stating the facts as above):—There appears to be nothing in the nature of the property in question here which would justify us in holding that time must necessarily be treated as being of the essence of the contract between the parties, in the absence of a special provision to that effect.

The language of the plaintiff's offer to purchase, and of the clause relied on by the defendants as making time the essence of the contract, is so clumsy that I have had some difficulty in coming to the conclusion at which I have arrived, that the intention expressed in it is to make time of the essence of all the terms of the offer, and not merely of the period of one day allowed for its acceptance. Reading the words "time shall be the essence of this offer" most strongly against the plaintiff, who uses them, they may, I think, be fairly construed to mean, "time shall be the essence of the terms of this offer in case of its being accepted."

The letter of Mr. Vandervoort of the 15th February, 1901, seems to me, however, to contain the clearest possible intimation to the plaintiff's solicitor that the stipulation as to time being of the essence would not be insisted on. That was the day fixed for completion by the terms of the contract, but the writer merely asks the plaintiff's solicitor to let him have the draft mortgage by return mail and to state a time at which it would be convenient to the solicitor and his client to close the purchase. His letter, moreover, contemplates some efforts which he was to make to get a release from Mrs. Willoughby of any possible claim, and impliedly puts off the completion of the matter until the result of these efforts should be ascertained. The letter in effect says: "We are not quite sure that we have everything ready on our part yet, but fix a convenient time for yourselves to close the purchase, and no doubt we shall then be ready."

In my opinion, there was here an absolute waiver of the stipulation in the contract by which the defendants would have been entitled to rescind for non-completion on 15th