This was not an adequate acceptance, because the contract did not contemplate acceptance by mail. The letter did not reach Lea until after the expiry of the option, upon either theory. $5,000 was the amount of the marked cheque, because in course of the negotiations which took place on Monday, some willingness had been expressed on the part of Lea to assent to a variation of the terms of the sale by reducing the cash payment from $10,500 to $5,000. At the time the cheque was marked, Dr. Doolittle did not anticipate any attempt on the part of Lea to prevent the transaction being carried out, and anticipated that the $5,000 would be all that would be required.

Fearing that the mailing of this letter and cheque would not be sufficient, Dr. Doolittle went to Leaside and met Lea, well on in the evening, and then gave him a letter accepting the offer together with an unmarked cheque for $10,500. These were not accepted by Lea, who insisted that the option was at an end at 4 o'clock, and who further refused to regard the cheque as payment.

At this time Dr. Doolittle only had a very small sum in the bank to his credit; but I have no doubt that if the cheque had been accepted by Lea, Doolittle would have arranged for payment in some way. But, as a matter of substance (apart from form) the cheque was by no means the same as money.

Lea then sold the property to Mr. Ogilvie, representing the Canadian Northern Railway, for $60,000. It is admitted that Ogilvie took with notice and has no higher position than Lea himself.

Upon these facts I think the plaintiff fails. I do not think there was any acceptance of the offer before it was withdrawn. The option being in fact without consideration and not under seal was nothing more than a mere offer. The telephone conversation at 6.30 p.m. amounted to a withdrawal of the offer. Up to that time there had been no acceptance.

Beyond this, I think that the offer could only be accepted by a cash payment of the sum stipulated for, and that this was a condition precedent to the existence of any contractual relationship. *Cushing* v. *Knight*, 46 S. C. R. 555.

Mr. Johnston very forcibly contends that Lea ought to be precluded from denying that there was an acceptance of the offer because of his failure to attend at the place arranged when the contract was to be closed. I cannot follow this.