The fact that the 10 days fixed by the agreement for making objections to the title had elapsed was of no consequence here. If the defendant could have been entitled to rescind, had objection to the want of title to the 6-foot strip (the deficiency) been made within the 10 days, he could hardly be deprived of that right now that the objection was taken after the time had elapsed—that would be giving the plaintiffs an advantage as a result of their own delay. The question should therefore be considered as if the objection had been made in time and the defendant had attempted to rescind under the agreement.

Bowes v. Vaux (1918), 43 O.L.R. 521, which was relied on as establishing the defendant's right to rescind, was not applicable to the present case.

In In re Jackson and Haden's Contract, [1906] 1 Ch. 412, it was held that a condition giving the vendor the right to rescind in the event of his inability or unwillingness to comply with the objection to the title must not be considered as giving him an arbitrary power to annul the contract. See the judgment of Collins, M. R., at p. 419. That case was exactly in point. The defendant here had placed himself in his present position by his own conduct. A very little forethought and care might have prevented all the trouble.

The learned Judge was, therefore, of opinion that the defendant was not entitled to rescind, and that the plaintiffs were entitled, upon completion of the payments required by the agreement, less $250, the amount fixed by the learned Judge as compensation, to a conveyance of the 59 feet to which the defendant could give title.

There should be judgment accordingly; the plaintiffs' costs on the Supreme Court scale to be paid by the defendant.

Before judgment is entered, the learned Judge will hear counsel upon the question whether the plaintiffs should be in some way protected against an existing mortgage upon the property.