

an action brought for the return of purchase-moneys paid to the defendant for 10 sub-lots in Vegreville townsite, in Alberta.

After setting out the facts, the learned Judge said that the defendant admitted that the lots were of speculative value, the market varying from day to day. The slump in values came in the summer of 1914, and the defendant would not then care to try to effect a sale.

It was questionable whether, under the terms of the agreement itself, time was of the essence of the contract as against the vendor. But, whether it was so or not, the plaintiff undoubtedly by his letters in 1914 waived it.

It then became his right at any time to fix a reasonable time within which the vendor should perform his part.

None of his letters did fix any time—much less a reasonable time. There was alternate threat and waiting—neither of which would be intimation to the plaintiff that a reasonable time was given to him within which he must carry out his agreement.

An announcement that performance is required at once or action will be brought is only an intimation that further effort is useless and no incentive to endeavour to complete. On the contrary, it tends to prevent exertion, and is a notice that it is now too late. It is no answer to say that, notwithstanding the threat, the plaintiff did wait, if, during the time of waiting his own convenience, he had thus in effect prevented the defendant from believing that anything he could do might not be rendered useless at any moment.

The fact that the defendant agreed by the contract to do his best to perfect the title did not make him more liable than if he had positively agreed to furnish a good title. It could not be said that he did use his best endeavour. He urged his vendors, and he procured a solicitor to act for him, but the solicitor in effect did no more than himself. He, like the plaintiff, could have given his vendors a reasonable time within which to carry out their bargain—but, whether with the object of making use of the purchase-money or not, he did nothing towards enforcing his rights. He did not allege that he had set aside any sum to meet the payments, though he said that the bank would have honoured a draft upon him, accompanied by the transfers.

Upon the whole, it did not appear that the trial Judge was in error.

*Appeal dismissed with costs.*