

The 13th of March was the thirteenth day after the giving of the option. The 13th fell on a Wednesday. Dr. Doolittle had interested the plaintiff Beer in the purchase. An interview had taken place on the Monday, when a draft agreement of purchase had been discussed. Many terms had been assented to, but no final agreement was concluded. It was then arranged that the parties should meet on Wednesday at 2.30 p.m., and that the transaction should be completed. For the purpose of avoiding any uncertainty as to this, Dr. Doolittle during Wednesday forenoon telephoned to the plaintiff advising him that he would be ready to close at the hour named, and the defendant promised to keep the appointment.

At the time stipulated Dr. Doolittle and Mr. Beer attended at the place appointed, but Lea did not put in an appearance. Not anticipating any difficulty in closing the matter in the ordinary mercantile way, by cheque, Dr. Doolittle and his purchaser Beer had not money with them for the purpose of making any formal payment or tender; but I find that if Lea had been present Mr. Beer was prepared to make the cash payment. He did not have the money standing to his credit in his bank, but he had securities deposited with the bank, entitling him to draw to an amount exceeding that required.

Lea had in the meantime learned of the plans of the Canadian Northern Railway, and was satisfied that he could sell the lands to the company at a much larger price. He had the view that the option expired at 4 p.m., it having been signed at that hour; and he deliberately refrained from attending at the place named, for the purpose of evading the receiving of any communication of the acceptance which he anticipated would then be made.

Doolittle was of the view that he had until midnight of the thirteenth to accept. He telephoned Lea at 6.30 p.m., asking an explanation of his failure to attend. Lea then told him that the option expired at 4 o'clock, and he would have nothing further to do with him.

What then took place, I think, amounts to a revocation of the offer, and an intimation by Lea that he would no longer sell.

Dr. Doolittle, for the purpose of accepting the offer within the time limited (in his view of the meaning of the option) wrote and mailed a letter to Lea enclosing a marked cheque for \$5,000 and accepting the offer.