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 sixty thousand dollars. 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 I do not think there was any acceptance of the offer before it was withdrawn.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. There can be no contract unless there is an offer and an acceptance of that offer. If there is a contract, then either party may—as in MacKay v. Dick, 6 App. Cas. 251—by his conduct dispense with the fulfilment of the contract, according to its terms, by the other, but so far as I can find, it has nowhere been suggested that one who has made an offer can dispense with an acceptance so as to create a contractual relationship. There would obviously be no mutuality.

Upon a different ground I think also that the plaintiff fails. Dr. Doolittle was an agent for sale. He had also the option referred to. He was re-selling to Beer at an advance of two thousand dollars. He falsely stated to Lea that he was selling at an advance of four hundred dollars. In Bentley v. Nasmith, 46 S.C.R. 477, it was held that where an agent had under the terms of his employment a right to himself become the purchaser, he could not purchase until he had divested himself of his character as agent, and that to do so he was bound to disclose all the knowledge he had acquired as to the probability of selling at an increased value; and, a fortiori, he must honestly disclose the facts with relation to any contract of re-sale which he may have already made.