A tender of money (temporarily supplied to plaintiff for the purpose by certain persons to whom he had apparently succeeded in reselling the property), and documents was made by plaintiff on 10th November—the deeds and mortgages not being in the form settled by defendant's solicitors in this respect at least, that a lady's name was inserted along with plaintiff's as grantees "as joint tenants and not as tenants in common," and her name appears also with his as mortgagors. This it is said was done with the view of preventing Mrs. Fuller's dower attaching—she being in England, and plaintiff having forgotten, he said, to bring out the mortgages which had been sent to him there for execution.

Assuming that the stipulation in the original contract that time should be of the essence thereof was waived by conduct of the parties, e.g., by Nasmith urging Kappele to cable to his client, etc. (*Davlin* v. *Radkey,* 1910, 22 O. L. R. at p. 411; Fry, sec. 1120), was the notice of 14th October, a reasonable one? That is a question of fact, Fry 5th ed. (Can. notes), sec. 1128.

The 14th October was a Saturday. Defendant's solicitors knew plaintiff was in England or on the sea. In *Hetherington* v. *McCabe,* 1910, 16 O. W. R. 154, my brother Britton, held a notice given on Friday 7th to close at or before 3 p.m. on Monday 10th of same month, not be a reasonable notice. *Vide Crawford* v. *Toogood,* 1878, 13 C. D. 153.

So here it might be considered that the notice was not reasonable. But defendant did not assume to act promptly or strictly upon it. The utmost consideration and leniency were extended to plaintiff. Defendant waited till plaintiff had been 4 days in Toronto, when it was manifest that he was only playing fast and loose with defendant so as to get some one to step into his shoes. Nasmith says if plaintiff had come in on 24th October, he believes Ryrie (the man behind defendant), would have accepted the money.

The jurisdiction in specific performance, is in the discretion of the Court, Fry, sec. 44—a discretion not to be arbitrarily or capriciously exercised, but only in cases where circumstances *dehors* independent of the writing are shewn making it inequitable to interpose for the purpose of specific performance, per Plumer, V.-C., in *Clowes* v. *Higginson,* 1 V. & B. 527.