

CLUTE, J.:—The action is for specific performance of an agreement in writing made by the plaintiff with the defendant Dunmore through one Moffat, Dunmore's agent.

The defendant Taylor, it is alleged, had knowledge of this agreement, and, he having the legal estate, it was agreed by the parties that Taylor should convey direct to the plaintiff. Taylor signed the deed in question, and, in doing so, attempted to close the matter; but the plaintiff's solicitor objected that no plan had been filed, and that there was an outstanding mortgage. The defendants allege that the plaintiff's solicitor's refusal to close the transaction, and the deal was off.

The truth seems to be that both parties were ready to carry out the transaction, and there is no reason why it should not have been carried out if the parties and their solicitors had exercised a little more courtesy toward each other.

It is clear, however, that the plaintiff's solicitor never refused to carry out the deal, although he seems to have been abrupt when Taylor called to close the matter—the solicitor then being engaged with other clients.

The trial Judge was of opinion that the plaintiff, "by his agreement, bound himself to treat the agreement as being null and void in case the vendor was unable or unwilling to remove any valid objection to the title which the plaintiff made, and having raised the objection, and the defendant not having the fee simple free from incumbrance on the property, he is bound by his agreement, and it should be considered null and void. No deposit was ever paid to the defendant, and no purchase-money tendered to him before the matter was declared off between him and the plaintiff's solicitor. The defendant was unwilling to remove the objection raised by the plaintiff, although, no doubt, he could have compelled his vendor to remove it, had he been able to pay him the balance due under his agreement; this, apparently, he was unable to do, or at any rate was unwilling to do. The action, in my opinion, should be dismissed with costs."

The defendant Dunmore authorised Moffat to sell for him two lots on the south side of Victoria avenue; the number is not given. A formal agreement was drawn up between the defendant, Moffat, and the plaintiff, in which Moffat agreed to sell to the plaintiff 95 feet more or less, on the south side of Victoria avenue, in the village of Weston, at \$7 per foot, cash. This agreement provides that the purchaser be allowed twenty days to investigate the title; and, if, within that time, he should furnish the vendor any valid objection to the title which the