

It is an action for specific performance, the defence being that time was of the essence of the contract, and that the plaintiff neglected to close the transaction on the proper date, whereupon the defendant assumed to rescind the contract.

The transaction was not closed on account of the illness of the plaintiff's solicitor and his consequent absence from his office on the date of closing and the day preceding.

The plaintiff replies that he accepted the title to the lands, and that it was the duty of the defendant, on or prior to the 15th March, to tender to the plaintiff a properly executed conveyance thereof, with a mortgage, drawn on the defendant's solicitors' usual form, or, at any rate, to have supplied such form as required in and by the terms of the said agreement.

The clause of the contract is as follows:—

“ . . . for the price or sum of seven thousand	
five hundred dollars	\$7,500
“payable as follows: five hundred dollars	500
“paid to G. W. Ormerod as deposit accompanying this	
offer, to be returned to me if offer not accepted,	
two thousand dollars	2,000
“to be paid upon the acceptance of title and delivery	
of deed, and give you back a first mortgage on the	
property for the remainder, repayable in 5 years	5,000
from the date of closing	\$7,500

“with interest from date of closing at 6 per cent. per annum, payable half-yearly, said mortgage to be drawn on the vendor's solicitors' usual form.”

The general rule, in the absence of other provision, is, that the purchaser prepares the conveyance at his own expense: *Foster v. Anderson* (1907), 15 O.L.R. 362, at p. 371; *Stevenson v. Davis* (1893), 23 S.C.R. 629, 633. But I think that, here, the reading of the whole clause is, that it was the duty of the defendant to prepare and tender to the plaintiff the conveyance. And I think the defendant's solicitors recognised that duty, because on the 21st February they wrote to the plaintiff's solicitors enclosing a draft deed for approval, and on the following day they wrote enclosing a corrected description of the lands to be conveyed.

I am of the opinion, therefore, that the plaintiff is not in default so as to entitle the defendant to invoke against him the clause in question.