

JUNE 9TH, 1902.

DIVISIONAL COURT.

LONG v. EBY.

Contract—Specific Performance—Delay—Time Essence of Contract—Waiver.

Appeal by the plaintiff from a judgment of MEREDITH, J., dismissing without costs an action for specific performance.

The plaintiff by a writing dated 30th January, 1901, offered to purchase certain town lots in Eglington for \$1,000, payable \$200 in cash to the vendors on acceptance of title, and the balance in instalments with interest at certain dates specified; deed to be given on payment of the \$200; and the remainder to be secured by mortgage, with the privilege of paying it at any time. The vendors were not to be required to furnish abstract of title or to produce any deeds or copies of deeds or papers not in their possession or control. The purchaser to be allowed ten days to examine title at his own expense. All objections to title to be made in writing within that time. If no objection be made within this time, purchaser should be deemed to have accepted the title. Sale to be completed on or before 15th February, 1901, on which date possession of the premises was to be given to him or he was to accept the present tenancies and to be entitled to rents. The contract was upon a printed form, and ended with the printed words, "Time shall be of the essence of this offer," but the following words were interfiled in writing immediately before them, "This offer good for one day."

The defendants signed an acceptance of the offer on the same day, and the plaintiff named Mr. Swayzie as the solicitor who would act for him.

On the 14th February, 1901, Mr. Vandervoort wrote to Mr. Swayzie as follows: "Mr. Faulkner tells me you are solicitor for Mr. Long, who has purchased certain property on Glen Grove avenue. The 15th is the last day for closing, and I would be glad to hear from you to-day if you are acting as Mr. Long's solicitor in this matter, and I will therefore send you the draft deed."

On the 15th February, 1901, Mr. Vandervoort, the solicitor for the defendants, wrote to Mr. Swayzie as follows: "I enclose draft deed of Glen Grove avenue property from the Eby-Blain Co., Limited, to your client John Long. Sale proceedings under charge No. 26750 were taken by the Eby-Blain Co., Limited, and the property put up by auction,