Moss, C.J.O., Osler, Garrow, Maclaren, Anglin, JJ.A.]
[From Divisional Court.

FOSTER *v.* ANDERSON.

Vendor and purchaser—Contract for sale of land—Time of essence—Time for completion—Delay of purchaser—Default of vendor to tender—Conveyance—Duty as to preparation—Misdescription of land—Statute of Frauds—Misrepresentation—Mistake—Specific performance.

The contract for the sale and purchase of land set up by the plaintiff, the purchaser, consisted of a written offer by him to buy and a written acceptance by the defendant of his offer. The offer contained, inter alia, the following provisions: "This offer to be accepted by Sept. 25, A.D., 1906, otherwise void, and sale to be completed on or before the 10th day of October, 1906." "Time shall be of the essence of this offer." "Deed . . . to be prepared at the expense of the vendor and mortgage at my expense."

Held, that time was of the essence as to all the terms of the contract, but that the duty of the purchaser to make tender of his purchase money did not arise until the vendor had done that which it was incumbent upon her to do to put herself in a position to complete the sale; it was her duty to prepare the conveyance and submit the same for approval, having regard to the provision last quoted, and having failed to do so, her default precluded her from setting up the lapse of the time at which the sale should have been completed as an answer to the plaintiff's claim for specific performance.

Among the words of description of the parcel of land in question, the contract contained the words, "being the premises known as number 22 Ann street." The correct number was 24, there was no number 22, and the defendant owned no other property in Ann Street.

Held, that there being a description which identified the parcel without the aid of the street number, the words quoted might be rejected as surplusage, and there remained sufficient, with parol evidence, to satisfy the Statute of Frauds.

OSLER, J.A., dubitante.

Held, also, upon the evidence, that misrepresentation and mistake such as would afford ground for refusing specific performance were not shewn.

Judgment of a Divisional Court, 15 O.L.R. 362, awarding specific performance affirmed.

G. H. Watson, K.C., and *F. J. Roche*, for the defendant, appellant. *A. H. Marsh*, K.C., and *W. J. Clark*, for the plaintiff.