

4th it was to be void, but, once accepted in time, it became an agreement for sale to be completed as a formal binding agreement for sale on or before 15th February, on which date, plaintiff doing his part, he was to get possession. If this agreement does not do more than give defendant the right to rescind by fixing a reasonable time to bring the bargain to an end, then that need not be considered. No such time was given. As a matter of fact plaintiff was prompt in the performance of the obligation devolving upon him, never declared his inability or unwillingness, and did not ask for any indulgence or extension of time. There was not, in my opinion, any suspicion on the part of defendant of plaintiff's inability to carry out his purchase. I find that plaintiff was able and willing to carry out his agreement.

If time was expressly made of the essence of this agreement, I think that was waived, and that defendant, by reason of his dealing with plaintiff's solicitor on 14th and 15th February, should not be allowed to set it up as a defence in this action.

As to tender, the objection to the form of it, apart from the time when made, which I have dealt with, ought not to prevail. It was apparent from the facts and circumstances that the money would be refused—that was defendant's attitude. He positively refused to carry out his agreement, said it was rescinded, and announced his determination to fight it out, so tender before bringing the action was not necessary.

Judgment for plaintiff for specific performance as prayed in case defendant can make a good title. Reference to Master in Ordinary to inquire and state whether a good title can be made, and in case a good title can be made to take an account of the purchase money, and tax plaintiff his costs and deduct from amount bound due for purchase money, and appoint time and place for payment of balance one month after making his report, and defendant upon such payment to convey to plaintiff, or to whom he may appoint, in accordance with conveyance to be settled by Master in case parties differ. But in case plaintiff shall make default in payment of balance of purchase money as the Master shall appoint, the contract will be rescinded and the action dismissed, and in that event defendant to pay plaintiff's costs of action up to judgment, and plaintiff to pay defendant's subsequent costs, the same to be set off pro