

ANDERSON v. FOSTER.

1909

*May 6.

*May 28.

*Sale of land—Contract for sale—Time of essence—Delay of vendor
—Description—Statute of Frauds—Specific performance.*

APPEAL from a decision of the Court of Appeal for Ontario(1), affirming the judgment of a Divisional Court(2), which set aside the verdict for defendant at the trial and ordered specific performance of a contract for the sale of land.

The plaintiff, Foster, made an offer by letter to purchase defendant's land in Toronto, describing it as "No. 22 Ann Street," and stating the dimensions. The deed was to be prepared at vendor's expense and there was a provision that "time shall be of the essence of this offer." The defence to the plaintiff's action for specific performance of the contract to purchase was that plaintiff had not performed his part within the time limited by the offer and that the description of the property being defective, as there was no lot on Ann Street numbered 22, the Statute of Frauds was not complied with.

The Court of Appeal held that time was of the essence of all the terms of the contract and did not relate only to the acceptance of the offer as held by the Divisional Court; that the delay by the plaintiff was due to defendant's failure to prepare the deed and was, therefore, no answer to the action; and that as the property was sufficiently described without reference

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Idington and Duff JJ.

(1) 16 Ont. L.R. 565.

(2) 15 Ont. L.R. 362.

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to the number of the lot the Statute of Frauds was complied with.

After hearing counsel on behalf of both parties, the Supreme Court of Canada reserved judgment and, on a subsequent day, dismissed the appeal.

Appeal dismissed with costs.

Watson K.C. for the appellant.

Marsh K.C. for the respondent.
