

favour of the plaintiff for the recovery of \$127.50 damages, in an action for a commission upon a sale of land by the plaintiff, a land agent, for the defendant.

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and RIDDELL, JJ.

Casey Wood, for the defendant.

Featherston Aylesworth, for the plaintiff.

The judgment of the Court was delivered by RIDDELL, J.:—
The defendant owned a piece of land in Port Arthur. The plaintiff, a real estate agent in that city, learning that the Government of Canada wanted an armoury-site, secured a number of options upon properties suitable for that purpose. Calling upon the defendant, he procured a document signed by him in these words: "Port Arthur, Aug. 13th, 1910. Russell Meikle, Esq., City. Dear Sir: Replying to your inquiry of to-day re price of lots 8 and 9 Second St., I will except thirty-eight hundred 00/100 dollars net. This price is to be good for thirty days, subject to previous sale by myself. John L. McRae."

The plaintiff says that upon that occasion, on the 13th August, "he (i.e., the defendant) said it was a very desirable site for the armoury. I did not say whether I was acting for the Government or not. Provided that a customer was likely and secured within thirty days, he would give me authority." Although the document mentioned does not expressly so state, it seems clear that the learned trial Judge is right in his finding that "on the 13th day of August, 1910, the defendant authorised the plaintiff, a real estate agent, to sell his property . . . at and for the price of \$3,800 net, the price to be good for thirty days . . . and it was agreed that any sum over and above the \$3,800 which the plaintiff could get for the property would belong to the plaintiff, and be his commission for making the said sale."

The next day the plaintiff saw Mr. Hunter, the agent of the Government, about this land; Hunter said the option must be given direct to the Government, and the plaintiff took him to see the defendant, told the defendant that he was quoting the land to Hunter at \$4,100. Hunter dictated an option to the Government for \$4,100, which was signed by the defendant, which set no time for acceptance, and which contained the following provision: "All buildings and erections on the property are to be retained and removed by me on or before the 1st of