

a certificate of *lis pendens* registered at 3 o'clock p.m. The deed to Heath was duly registered on the 1st June at 3 p.m. Nearly twelve months elapsed before the writ and statement of claim were served on defendant Preston and the action proceeded with. Plaintiff had long before this become aware of the conveyance to Heath, but the action was brought down to trial in November, 1902, without his having been made a party.

For defendants it was contended that if the letter of 13th December, 1899, was an offer to sell, which they denied, it was an offer to sell to Plummer, and not to plaintiff, inasmuch as Plummer was not then plaintiff's agent; that, if it was an offer, it was not followed up by a binding acceptance within a reasonable time; that any bargain made with Plummer after he had become plaintiff's agent was oral, only, and that the agent's letter of 12th January, 1900, was not evidence of a binding contract: that Plummer was not a purchaser, but was only an agent of the owner to sell, as evidenced by the promise to pay him a commission; that defendant Heath being a *bona fide* purchaser and having obtained a conveyance before the commencement of the action, specific performance could not be enforced against him; and lastly that the delay in carrying on the proceedings against defendant Preston and in commencing them against Heath was, in any case, such as to disentitle plaintiff to relief.

I am, in the first place, of opinion that the letter of 13th December is in terms an offer to sell, on the acceptance of which by Plummer a valid contract of sale would have been constituted between Plummer and plaintiff. It is more than a mere statement that the writer is willing to receive an offer. . . . *Harvey v. Facey*, [1893] A. C. 552, and *Johnston v. Rogers*, 30 O. R. 150, distinguished. . . . Here defendant says (in effect): "I am willing to sell at such a price. Will you, W. H. Plummer, buy?" And the person to whom the letter is addressed says, "I will." If the requisites of the statute are complied with, there is a valid contract.

Then is there such a contract between plaintiff and defendant Preston? I think there is. McKay was the latter's agent to sell, armed with very comprehensive powers. Plummer may not have been plaintiff's agent to buy when he received the offer from McKay, but in the evidence I find that the latter's belief or expectation (so far as that may be material) was that either he would find some person other than himself who would buy, or that he, or he and others to be associated with him, would do so at the price named, less a