

clusive evidence that the sale had been made by the plaintiffs and that they were estopped from denying it.

Held, that the plaintiffs were not estopped from shewing that it was Kirkpatrick who had made the sale and that, as the evidence established this, defendant had no remedy against the plaintiffs and must pay the amount of the note.

Henderson and Matheson, for plaintiffs. *Coldwell*, K.C., and *R. A. Clement*, for defendant.

Mathers, J.]

GRANT v. REID.

[March 8.

Statute of Frauds—Agreement of sale of land—Memorandum in writing—Costs.

Defendant, being informed by one McPhail that the plaintiffs would purchase the lot in question for \$2,000, ascertained from the owner that he would sell it for \$1,200. Defendant then, without making any bargain with the owner, went to McPhail and signed a document not under seal agreeing to sell the lot for \$2,000 and acknowledging receipt of a cheque for \$100 as deposit on same. This document did not mention the name of the purchaser or even McPhail's name, but it was McPhail's cheque for \$100 that was given. McPhail had falsely represented to the plaintiffs that he had the lot for sale as agent of the owner, and the plaintiffs negotiated with McPhail on that basis. Afterwards the owner refused to sell the lot, and plaintiffs sued defendant on the document he had signed for specific performance or damages in lieu thereof.

Held, that, as McPhail was not the agent of the plaintiffs in the transaction, the case was not brought within *Pearce v. Gardner* (1897) 1 Q.B. 688, and his cheque was not sufficient to supply the omission of the purchaser's name from the agreement and the two documents did not together constitute a memorandum in writing sufficient to satisfy the Statute of Frauds. Action dismissed without costs, as defendant's conduct in agreeing to sell what he did not own had brought about the litigation.

Laidlaw and St. John, for plaintiffs. *Elliott and McNeill*, for defendant.