

THE  
ONTARIO WEEKLY REPORTER

VOL. 22

TORONTO, AUGUST 8, 1912.

No. 11

COURT OF APPEAL.

JUNE 28TH, 1912.

MAYBURY v. O'BRIEN.

3 O. W. N. 1546; O. L. R.

*Vendor and Purchaser — Statute of Frauds — Receipt Sufficient Memorandum.*

Action by plaintiff for specific performance of an alleged agreement for the sale of certain lands entered into with an agent presumably acting for defendant. Defendant denied the agency and pleaded the Statute of Frauds.

CLUTE, J., gave judgment for plaintiff, 20 O. W. R. 683; 25 O. L. R. 229; 3 O. W. N. 393, holding that the following receipt: "Sault Ste. Marie, June 16th, 1911. Received from Alfred W. Maybury Two hundred dollars account purchase 28½ ft. x 132, being pt. lot 19, N. Queen adjoining Sault Star Bldg. on East. Price 225.00 per front ft., terms 200.00 down, balance of \$1,937.00 after approved title & documents, 500.00 in Sept. & March, balance of equity about \$1,000.00 equally in Dec. 11 and June 12, remainder semi-annually about \$500.00 in Sept. & March each year until paid. Interest 7%, purchase price \$6,412.50, Wilcox and Pardee, by Mr. Jno. B. Pardee," who, at the same time wrote on the stub as follows: "Date June 16th, 1911. Name Alfred W. Maybury. Address a/c purchase from Wm. O'Brien property 28½ feet adjoining Star Building, \$200. check," was a sufficient memorandum to satisfy the 4th section of the Statute of Frauds.

COURT OF APPEAL *held*, that there was no sufficient evidence that Pardee was defendant's agent for the sale of the property, and that if such an agency was to be inferred, it was for a sale in which one-third of the purchase-price was to be in cash, whereas the alleged sale provided for the payment of \$200 in cash, the balance to be paid "on approval of title and documents," which constituted a distinct departure from the terms of the agency and rendered it void.

Appeal allowed and action dismissed, both with costs.

An appeal by the defendant from the judgment of HON. MR. JUSTICE CLUTE, without a jury, in favour of the plaintiff, 20 O. W. R. 683; 25 O. L. R. 229; 3 O. W. N. 393.

The appeal to Court of Appeal was heard by HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR.