

not arrived at a completed agreement. The Statute of Frauds was also set up.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

J. W. Bain, K.C., and J. M. Forgie, for the appellant company.

Gideon Grant, for the defendant, respondent.

GARROW, J.A., who delivered the judgment of the Court, described the negotiations between the parties. There was a written offer to purchase the land described as block G. for \$2,000, a payment of \$100 on account. No acceptance or notice of acceptance was sent by the plaintiff company to the defendant; but the plaintiff company sent to the defendant for execution a contract or agreement upon a printed form, which the defendant neither executed nor returned. This document contained a reservation of a right of way not contained in the written offer. The defendant entered upon the land after the offer (10th June, 1914), cut down some trees, planted others, and erected three small houses, which he occupied on occasions during the summer of 1914. There were further negotiations about the proposed right of way; but the defendant refused to execute any agreement.

The burden of proving a completed agreement was upon the plaintiff company, and that burden had not been satisfied. The main bone of contention was the right of way, its width and location. A road was actually constructed by the plaintiff company in August, 1914; but, before it was completed, the plaintiff company registered a plan of the subdivision, shewing the way of a different width and in a different situation. The defendant said that he would not close until the road question was settled. And until that question was settled, there was not a complete agreement between the parties.

The plaintiff company could not, as was argued, stand upon the original written offer. The defendant was entitled to a prompt and explicit acceptance, and notice of the acceptance; instead of which the plaintiff company merely sent him, as the only evidence of acceptance, a formal agreement for execution, containing an important reservation not in the written offer; and thenceforward all that took place between the parties was of the nature of negotiations, chiefly relating to the way so reserved.