

above the rate of \$8 per foot frontage. Kindly advise us if you wish to purchase at that price. Yours truly, Hearst & McKay."

Plummer was not at this time agent for anyone to purchase, but he took the letter to a Mr. Rowland, the plaintiff's general solicitor and man of business, to be submitted to plaintiff to see if he would take up the offer. . . .

About 23rd December McKay asked Plummer if there was any chance of making a sale "to him or his associates." Plummer thought the parties were not disposed to buy, and McKay on that day advised his principal that there seemed no immediate prospect of a sale. On the 31st December, however, Clergue told Rowland to authorize Plummer to accept the offer, and Plummer accordingly did so within the next two or three days, orally and, as it would seem, in his own name, or at all events without disclosing that plaintiff was the purchaser. It was, however, quite understood between McKay and Plummer and Rowland, with the latter of whom plaintiff got into communication immediately after the acceptance of the offer, that the deed was to be made to Plummer, and McKay was evidently satisfied to accept him as the purchaser, whether he was acting in the interest of other persons or not.

Several interviews took place between McKay and Rowland as to carrying out the sale, in one of which McKay told him he would prepare the deed and send it to defendant Preston for execution. On the 12th January, 1900, McKay accordingly did so, Plummer being named in the deed as the purchaser, with the following letter written by him in the name of his firm:—"T. B. Preston, Esq., Iona, Mich.—Dear Sir: We have arranged to sell the two-thirds interest in the water lots to W. H. Plummer for \$1,200. This, we consider, is an extra good sale. We will, of course, have to allow him \$50 on account of commission, and, in addition to the \$50, we will have to charge you our commission of \$60 on the sale. . . Kindly have deed executed and return to us at once, and oblige, yours truly, Hearst & McKay."

Shortly afterwards defendant Preston wrote McKay refusing to carry out agreement. . . .

By deed of 18th May defendant Preston, without further communication with McKay, conveyed his interest in the property to defendant Heath, for the expressed consideration of \$3,000, of which \$900 was paid on the 19th May, and a promissory note given for the balance, which was paid in full. . . The affidavit of execution of this deed purports to be sworn on the 29th May, 1900, on which day, and in ignorance of its execution, the writ of summons in this action was issued and