

fair and White said that they looked upon the transaction as a mere option, and not as a purchase—that they, as a matter of business, opened an account with any intended purchase.

The receipt was dated the 22nd May, 1911. On the 31st May the firm wrote Byers that they were pleased that he had secured Yeo Island, and asked him to send an estimate of what he found on it. On the 16th June, Thompson wrote Thomson asking “for another thirty days’ option on Yeo Island, as the other parties are not satisfied without seeing more of it.” On the 20th June, Thomson wrote to the firm that he considered the contract of sale of lumber on Yeo Island to the firm closed; that he gave no option; that he would wait two weeks for payment of balance. There was more correspondence. Thomson threatened to bring an action. Byers examined the island, and reported favourably to the firm.

This action was begun on the 16th August.

The defendants Playfair and White pleaded a general denial; that Byers had no authority to contract for them; and the Statute of Frauds.

The defendant Byers pleaded that he was only an agent; that Thompson agreed with Thomson to buy the timber on Yeo Island for \$5,500—\$100 down and \$5,400 in one month; and that, on Thompson’s instructions, he gave the draft as the firm’s agent, and had drawn up “as evidence of sale and purchase of said timber the papers or documents . . . set out in the . . . statement of claim.”

The action was tried before RIDDELL, J., without a jury, at Toronto.

D. Robertson, K.C., for the plaintiff.

R. McKay, K.C., for the defendants Playfair and White.

O. E. Klein, for the defendant Byers.

RIDDELL, J. (after setting out the facts):—Thompson acted as a sort of foreman in buying ties, etc., and Byers in shipping them; but I cannot find that either had the right to enter into such a contract as this. . . .

At the trial the defendant Byers changed his story (from that set out in his pleading), and set up an option. I entirely discredit this story, and think that he was telling the truth when he gave instruction for the defence. . . .

The first question is, “Does the Statute of Frauds apply to the sale of such property as is the subject-matter of the present action? . . . What was sold was an interest in land within