

agreed to sell to" the plaintiff the therein described property: the price to be \$1,475; the option to hold good for two months from date, and to be extended for a further term of two months on payment of \$10; both of such payments to be applied on the purchase-money if the sale is carried out on or before the expiration of the option, and to be forfeited if the sale is not carried out. Ross was to retain possession until the purchase was completed. The agreement proceeds: "When sale is made, I agree to accept \$500 at time of sale and for the balance of \$975 a first mortgage to run for a period of five years with interest at 6 per cent."

The plaintiff did pay another \$10, thus extending the option till the 13th May, 1913.

On the 5th May, the plaintiff went to Ross's house, near the land, and wrote out and signed on Ross's duplicate of the agreement a memorandum as follows: "I hereby accept and exercise this option, terms and conditions as mentioned." He did not pay or offer any money, but, according to the defendant Ross, he said, "Now this is a sale, I consider it a sale according to this agreement"—to which it does not appear that Ross made any reply. The plaintiff went away, and did not make any effort to see Ross again until the 17th May. On that date and again on the 21st, he drove to Ross's house, but found it closed—Ross living alone and being frequently in Windsor. On the 19th May, Ross went to the plaintiff's office in Windsor "to close the matter with him," and he says that, if he had found him then, he would have taken the money, though he denies having in any way agreed to postpone the date for its payment. However, the plaintiff was not there, and Ross told a clerk there to tell the plaintiff that the option was off, and he did not want anything more to do with it. In the 19th May, the plaintiff, on his way to Ross's house, passed the latter driving with the husband of the defendant Gauthier, but did not stop him or mention the subject of the sale.

On the 23rd June, the plaintiff registered the agreement of the 13th January, and on the 5th June began this action. On the latter date, Ross conveyed the land to the defendant Gauthier, who subsequently conveyed to the defendants Gundy and Gundy.

Not until after this action was first set down for trial was any tender of documents or offer to pay the \$480 made by the plaintiff; but he says that he was at all times on and after the 5th May ready to pay, and he had on the 7th May instructed