

14th, but, although he instructed his solicitor by telephone between 6 and 7 p.m. of the 15th to accept the offer, his proceedings and those of his solicitor were so dilatory that the plaintiff was not informed of the acceptance until about 10 a.m. of the 16th, and was unable to communicate it to the proposed purchaser within the time limited, and the offer was withdrawn. Up to this time neither the defendant nor his solicitor had asked plaintiff to give the name of the purchaser.

Held, that under the circumstances, the defendant had waived the condition requiring the plaintiff to "produce" the purchaser to the defendant, and that the latter had refused to make the sale, within the meaning of the agreement, and that plaintiff was entitled to recover from the defendant one fourth of the whole purchase money. This was not the ordinary case of an agent employed to find a purchaser. The amount to be paid plaintiff was five times the ordinary commission. The agreement was made to settle a suit in which the plaintiff claimed an interest in the lands, and he had a real and substantial interest in them which, under certain circumstances, was to become forfeited to the defendant. Forfeitures are not favoured by the Court, and if, by any reasonable construction of the agreement a forfeiture can be avoided, the Court is bound to adopt such construction. It was admitted that if the plaintiff had given the purchaser's name to the defendant's solicitor that would have been a sufficient "producing" of the purchaser, but the plaintiff was not even asked for his name. It may fairly be inferred that the plaintiff had the right to employ agents to sell the land, who would thereby become the agents both of the plaintiff and defendant, and, therefore, the agent through whom the offer was made was the defendant's agent as well, and the purchaser was known to him, which would satisfy the requirements of the agreement. If the name had been asked for, no doubt the plaintiff could have ascertained and communicated it to the defendant or his solicitor in plenty of time, but the omission to give the name was treated as entirely unimportant, and it would be unjust to now permit the defendant to raise the objection, and by so doing deprive the plaintiff of an interest in lands valued at over \$6,000.

Haggart, K.C., and Sullivan, for plaintiff. Pitblado and Hoskin, for defendant.