

defence, in which case this will be embodied in the order. But I do not wish to be understood as suggesting the need of any amendment.

MABEE, J.

DECEMBER 3RD, 1906.

TRIAL.

CARRICK v. McCUTCHEON.

Vendor and Purchaser—Written Offer of Option to Purchase Land—Oral Acceptance—Refusal of Vendor to Carry out—Offer not under Seal—Consideration—Finding of Jury—Taking Unfair Advantage—Mistake as to Title—Statute of Frauds—Registry Law—Commission—Breach of Contract—Damages—Loss of Profits on Re-sale.

Action to recover damages for breach by defendant of his agreement to sell land to plaintiff at the price of \$12,000.

H. Cassels, K.C., for plaintiff.

M. J. Kenny, Port Arthur, for defendant.

MABEE, J.:—On 23rd May, 1906, defendant gave to plaintiff the following option:—

“In consideration of \$1.00, the receipt of which is hereby acknowledged, I hereby give L. J. Carrick a 30 day option upon my Cumberland street property, having a frontage of 33 feet, first south of Park on Cumberland, for the sum of \$12,000, less 5 per cent. commission, payable \$2,000 cash and \$2,000 yearly till balance is paid, together with interest at 8 per cent.”

Plaintiff orally accepted this option on the morning of 24th May.

The option was not under seal, and defendant contended that the one dollar paid by plaintiff to him at the time had not in fact been paid as the consideration for the option, but was a loan by plaintiff to him. The jury found that the dollar had not been lent, but had been paid as the consideration for the option. Plaintiff stated that at the time he obtained this offer from defendant he had in fact sold the