

He excuses this inaction between 5th and 17th May because he alleges that on 5th of May Ross had directed him to have Mr. Kirby prepare the papers for Ross and had agreed to come in and close the sale, but Ross denies this and whatever may have been the actual fact as to this it is impossible to disturb the finding of the learned trial Judge against the existence of such an arrangement.

The case then stands that instead of making a payment up to \$500 at the time of sale the plaintiff seeks to make out that there was a sale without such a payment which was of the very essence of the transaction. The two payments of ten dollars were not made or accepted as deposits on account of purchase money but only as consideration for postponing the term for the plaintiff to determine whether there would be a sale at all or not. If it had been a case of an immediate sale, that is immediate acceptance of the offer, the plaintiff could not have pretended that it was closed without payment of the sum which must accompany the acceptance and form part of the actual making of the agreement itself. The time for acceptance being postponed does not alter the character of the payment which was to accompany it or turn it into a postponed instalment of the purchase money.

I do not see any reason to disturb the decision of the trial Judge, more especially in view of the speculative nature of the transaction and the circumstances which gave rise to the increased value of the property over ordinary farming land.