

as the only writings, that the Court must look, except for explanation of the circumstances when necessary.

The most that could be read from all the writings was this: "On the 2nd June, 1914, I bought these bonds, \$223,700 of this railway, from McKinnon & Co. They must be paid for this 16th June, and they have sent me a statement calculating the price at \$224,585.98, and debiting me, as purchaser, with that amount." It could not be said that the defendant was, in writing, acknowledging that he had agreed to pay that amount which the plaintiffs claimed.

The Statute of Frauds applied. In the absence of evidence, it could not be presumed that the statute was not still in force in Alberta; so that, whether the law of that Province or of Ontario should govern, there must be a memorandum in writing. The bonds referred to the trust-deed which conveyed the real property of the railway company to the trustees to secure the payment.

The appeal should be allowed with costs.

LATCHFORD, J., concurred.

RIDDELL, J., read a judgment in which he said that four defences were set up by the defendant: (1) that he was only the plaintiffs' agent to sell; (2) that, if he agreed to buy the bonds, the agreement was procured by false and fraudulent representations made by the plaintiffs and relied on by the defendant; (3) that the sale, if any, was subject to the approval of the defendant's solicitor, which had not been obtained; and (4) the Statute of Frauds, R.S.O. 1914 ch. 102.

After an examination of the grounds of all four defences, the learned Judge concludes that none of them can avail the defendant.

With regard to the Statute of Frauds, he said, that was fully met. In the telegram of the 3rd June the defendant asserted that he had absolutely bought "the Alberta bonds which you have particulars of"—his correspondent had received particulars of the bonds by a circular sent him by the defendant; the terms appeared in the telegram of the 29th May—"McKinnon will sell Alberta bonds \$223,700 less \$2,500 to us subject to Toronto payment and delivery small quantity sold." The bonds were those Alberta bonds which McKinnon & Co. were selling—what they were, even if uncertain, could be rendered certain.

Reference to *Owen v. Thomas* (1834), 3 Myl. & K. 353;