

The motion was heard in the Weekly Court, Toronto.
G. W. Mason and K. B. Maclaren, for the plaintiffs.
J. R. Roaf, for the defendant.

MIDDLETON, J., in a written judgment, said that the question argued was whether, upon the correspondence, a contract had been made out. There can be no contract for sale unless there can be found an offer to sell and an acceptance of that offer or an offer to purchase and an acceptance of that offer. In each case of this type it is a question to be determined upon the language used, in the light of the circumstances in which it is used, whether what is said by the vendor is a mere quotation of price or in truth an offer to sell.

Reference to *Harvey v. Facey*, [1893] A.C. 552; 35 Cyc., p. 50; *Johnston v. Rogers* (1899), 30 O.R. 150; *Harty v. Gooderham* (1871), 31 U.C.R. 18.

In May, 1918, the plaintiffs wrote the defendant: "With reference to purchasing this house (25 Hanna avenue), kindly state your lowest price."

On the 6th June, 1918, the defendant answered: "Re house 25 Hanna. The lowest price I would care to sell at for cash would be \$1,650."

There was nothing more until the 16th October, 1919, when the plaintiffs wrote: "We would be pleased to have your very lowest price for 25 Hanna avenue."

On the 21st October, 1919, the defendant wrote: "The last price I gave you is the lowest I am prepared to accept. In fact I feel that under present conditions this is exceptionally low and if it were to any other party I would ask more."

This was treated as an offer, and (subject to a question to be mentioned) accepted. A cheque was sent for \$500, and the defendant was asked to have a deed prepared. This was on the 23rd October. On the 27th, the defendant's solicitor sent a draft deed and said he would be ready to close on the 1st November. Some letters were exchanged about the deed and title, but no trouble developed until the 5th November, when the defendant's solicitor wrote that there was no contract, and returned the cheque.

There was here far more than a quotation of a price. The letter of the 21st October, 1919, was an offer, and it was accepted.

If the language was ambiguous, it would be fair to see how the defendant himself viewed the situation. When the letter of acceptance (23rd October, 1919) reached him, he did not say that there was no contract; he submitted a deed, suggested an immediate search of his title, and named an early day for closing—in the meantime retaining the cheque.