

agent of the defendants, in connection with a proposition of the defendants that a syndicate should be formed in Findlay, Ohio, where the plaintiff resided, to purchase from the defendants 10,000 acres of land in Saskatchewan. If the syndicate was not completed, the money of the subscribers was to be returned, as the plaintiff alleged. The syndicate was not completed. The plaintiff subscribed for 960 acres, and handed Webster a cheque for \$480, payable to the defendants, who cashed it. The defendants set up that the \$480 had become forfeited. LATCHFORD, J., found that Webster represented to the plaintiff that the defendants would return the money in the event of the syndicate not being completed, and gave judgment for the return of the money.

The appeal was based upon two grounds: (1) that Webster was not the agent of the defendants, nor authorised to make the bargain found to have been made by him with the plaintiff, and that the defendants were not bound by it; (2) that parol evidence of the bargain was inadmissible, as the effect of it was to contradict or vary the agreement which the plaintiff had signed.

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and CLUTE, JJ.

I. F. Hellmuth, K.C., and G. F. Macdonnell, for the defendants.

W. J. Elliott, for the plaintiff.

TEETZEL, J.:—The substantial question on the appeal is, whether the parol evidence was properly admissible upon which my learned brother found that the defendant's sub-agent, Webster, agreed with the plaintiff, at the time the written agreement was signed and the \$480 paid, that, if the plaintiff would subscribe for 960 acres and pay a deposit of 50 cents an acre thereon, the deposit would be returned by the defendants in the event of a sale of 10,000 acres of this land to the proposed syndicate, of which the plaintiff was to be a member, not being completed, or in the event of the proposed syndicate not being filled by a sufficient number of subscribers.

While not so expressed in the judgment, the effect of the finding is, that the obligations contained in the agreement signed by the plaintiff to select the land subscribed for and make the payments therefor were to be subject to the condition that the agreement should be signed by a sufficient number of other persons to fill the proposed syndicate, and that the deposit was to be returned upon that condition not being performed.