

C.J.Ex.D., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

L. C. Raymond, K.C., for the plaintiff.

F. W. Casey, for the defendant.

THEIR LORDSHIPS (V. V.), agreed with the judgment below and dismissed the appeal with costs.

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SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

FEBRUARY 7TH, 1913.

LEVITT v. WEBSTER.

4 O. W. N. 746.

*Vendor and Purchaser—Specific Performance—Authority of Agent—Variation from Authorised Terms—Sale for all Cash Instead of Part on Mortgage—Dismissal of Action.*

Action for specific performance of an alleged agreement to sell certain property in Hamilton. One Whipple, a real estate agent in Hamilton, had corresponded with defendant, who resided in Toronto, in reference to the sale of the property in question, and had received from her a letter stating she would sell for \$5,000—one-half cash and balance on mortgage at 6 per cent., payable half-yearly. Later he submitted an offer of \$4,500, to which defendants replied that she would not accept less than \$5,000, and pointing out the revenue she derived from the property in question, finally for \$5,000 all cash. Defendant repudiated Whipple's right to close the sale without further consulting her.

KELLY, J., (23 O. W. R. 633) dismissed action with costs on the ground that plaintiff's offer inasmuch as it was all cash, instead of one-half on mortgage, was not in accordance with the authorized terms of sale given by defendant to Whipple, and that the latter had no authority to conclude a sale on any other basis especially as defendant had intimated that the securing of a revenue was of great importance to her.

SUP. CT. ONT. (2ND APP. DIV.) affirmed above judgment.  
*Bromet v. Neville* (1908), 53 Sol. J. 321, not followed.

An appeal by the plaintiff from a judgment of HON. MR. JUSTICE KELLY, 23 O. W. R. 633.

The appeal to the Supreme Court of Ontario, Second Appellate Division, was heard by HON. SIR WM. MULOCK, C.J.Ex.D., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.