

Plaintiff then fell back on the telegram and receipts as constituting an agreement for breach of which he claims he is entitled to damages as against defendant W. H. Philp.

After Bergland's receipt of the last recited telegram, Findlay communicated with plaintiff, who paid Findlay another \$80 by cheque, payable to The Realty Exchange, the cheque not indicating in any way the purpose for which it was given. It was endorsed by "The Realty Exchange, W. H. Findlay;" Findlay received the proceeds thereof, which, at the time of the trial, was still in his possession.

I do not think plaintiff can succeed in his contention that Philp's telegram of September 21st, and the endorsement by Findlay of the \$80 cheque (or indeed all the telegrams and receipts taken together), constitute a memorandum of an agreement sufficient to satisfy the Statute of Frauds. Philp's telegram of September 21st to Bergland was simply an instruction to accept the offer. Bergland did not act on it by giving any acceptance. Whatever authority was given by Philp was to Bergland only, and even if Findlay took the \$80 cheque and signed the endorsement thereof under instructions from Bergland, and even if that act could be held to constitute an acceptance by Findlay of plaintiff's offer, the plaintiff's case is not made out, for Bergland had no power to delegate the authority given to him.

On the whole evidence the plaintiff's action must be dismissed, but as the course pursued by W. H. Philp tended to mislead plaintiff into the belief that he was dealing with those who had a right to contract with him, and for other reasons appearing upon the evidence, the dismissal will be without costs.

HON. MR. JUSTICE KELLY.

JUNE 27TH, 1912.

RE SOPER.

3 O. W. N. 1573.

*Husband and Wife—Dower—Forfeiture—Adultery—R. S. O. (1897)
c. 164, s. 12.*

KELLY, J., *held*, that a wife who had deserted her husband and refused to return and had lived for a long period of time in adultery with another man had forfeited her right to dower.

In re S. 14 O. L. R. 536, referred to.

An application under sec. 12 of The Dower Act, R. S. O. (1897), ch. 164, to authorize the applicant to sell free from