

Plaintiff seemed willing and anxious all along to carry out his part of this agreement. Defendant resists, upon the following grounds . . . :—

1. Plaintiff was to give defendant a written undertaking that he, plaintiff, would commence to build houses on this land before 15th April, 1907, and that without that defendant would not have entered into the contract.

2. The payments of \$25 and \$275 mentioned in the offer were not made within the time limited.

3. Time of the essence, and plaintiff did not do his part within the time.

4. No formal agreement tendered within the time limited.

I am of opinion that the written undertaking which it is alleged was to be given by plaintiff as to when he would commence building on the lot in question was no part of the agreement for sale, and that the agreement for sale is in no way affected by it. It was not made a part of the agreement for sale. The handing over the offer and acceptance to plaintiff must be considered as the act of defendant.

In the beginning of this transaction Douglas Ponton was acting as agent of defendant for sale of this property, and McTaggart was a sub-agent. He was in the real estate business, looking for buyers and sellers and acting wherever he could get a commission. He received plaintiff's offer, using his own carefully prepared office form for the purpose. That offer was in terms an agreement with defendant, through W. O. McTaggart & Co., as agents, to purchase the property in question. Having received the offer, McTaggart and Ponton went together . . . to defendant on 4th February, when defendant accepted in writing plaintiff's offer, accepting it upon the same document as the offer, and agreed to pay the commission of the agent McTaggart. Defendant then told Ponton and McTaggart that he would not sell unless he got an agreement from plaintiff that he, plaintiff, would commence to build on the property not later than 15th April. Apparently, upon his own statement, defendant would have been satisfied with a letter from plaintiff to that effect. Ponton says that McTaggart was not to hand to plaintiff the agreement to sell until he (McTaggart) got plaintiff's letter. On 5th February McTaggart saw plaintiff, obtained a letter (exhibit 3) from him, and handed the agreement to him. This letter is not in terms such as defendant says he required, but McTaggart accepted it, de-