

with \$100 in money and sent him to Niemi to close a bargain. Gardiner did not conclude a bargain, but Niemi was induced to go to Whalen's office, where a bargain was made by Whalen for the piling, and it was taken away and turned in to the Burrill company. The agreement for sale by Niemi to Whalen's firm or company was made on the 28th August, 1913. In September, the plaintiff's solicitor wrote to Whalen and also to the Burrill company, demanding the money. The Burrill company paid the money into Court. The defendant Whalen fights; and, upon his application, an order was made by a Local Judge on the 14th November, 1913, bringing in Nicolas Niemi as a third party.

The questions submitted to the jury and the answers were:—

(1) Did the defendant Whalen, before the purchase by him from Niemi, have notice of the agreement between McGregor and Niemi? A. Yes.

(2) Did the plaintiff, McGregor, leave the piling beyond what was a reasonable time for taking it away under the contract? A. Yes.

In the view I now take of the case, it was not necessary that I should find, or set out all of my findings upon the facts, but they are for the Court, should the case go further. The alleged contract is unilateral. It is a document addressed "to whom it may concern," signed by Niemi, which states that he agrees to sell to McGregor, the plaintiff. McGregor has not signed. It is objected by counsel for Niemi that this is void as against Niemi for want of consideration. Apart from that, and assuming that it is a contract on which the plaintiff may rely, what is the true construction of it? It was not a contract of actual sale, by which the property immediately passed to the plaintiff. It was at most an agreement to sell; and the conditions precedent to the plaintiff becoming entitled to the property were, that the plaintiff would remove it within a reasonable time, and that, before removing it, the plaintiff would pay the price agreed upon. The plaintiff did not pay, nor did he tender, the amount required. He did not attempt or offer to remove the property within a reasonable time from the day of the date of the agreement. The plaintiff had not the actual possession, nor had he the right of property or possession in the piling at the time of the sale to Whalen. There was no tender. What took place between Ray Short & Co. and the plaintiff, by which the plaintiff could have got the money, even if that was communicated to Niemi by any messenger sent by Ray Short & Co., could not amount to a tender, and there was no waiver by Niemi of the payment, or of any of the conditions in