

fence by pleading the Statute of Frauds, and I allowed its amendment.

Plaintiff was for some years prior to the alleged sale the tenant of the defendant of the lands in question.

On April 5th, 1912, defendant wrote plaintiff as follows:

"I do not like to trouble you, but I think I will have to put up a house beside you. I have been trying to get one in the west for a friend of mine but property up here is almost out of reach."

Plaintiff then approached defendant about buying the property, following which defendant wrote the following to the plaintiff:—

"Hamilton, April 8th, 1912.

"Dear Sir:

If the house and lot is worth \$1,600 to you, you can have it: if not, it is all right.

"Yours truly,

"James McFarland

"158 Canada Street."

On the face of this letter it was not addressed to any one, but it was sent to plaintiff by post in an envelope addressed to him at 33 Chestnut Street. This latter document is the memorandum of agreement now relied upon by the plaintiff.

According to the plaintiff's own evidence he then wrote defendant that he thought it would do, but he would let defendant know on the following Saturday night. This letter is not produced. On the Saturday night, defendant went to plaintiff's house, when a discussion took place about the terms of payment. Plaintiff says that he informed defendant he would pay all cash, that is, that he would pay \$150 at that time and that he expected some more money soon, and that defendant expressed himself as satisfied with the proposal, that he was satisfied if he got 6 per cent.

Plaintiff's wife, who was present, says \$150 was mentioned.

Defendant, on the other hand, says that plaintiff proposed to pay \$150 down and \$50 every six months, and that if he made default in the payments he would surrender the property, but that he (defendant) expressed dissatisfaction at this proposal, and said he would see his solicitor. He did see his solicitor, Mr. Chisholm, but denies having given him any instructions. Following this, defendant by letter requested plaintiff to go to Chisholm's office, which he did, and there further discussion took place between Chisholm and plaintiff regarding the terms of