

TEETZEL, J.:—Defendant, who resides in California, is the owner of 468 and 470 Yonge street, and 3 Grenville street, Toronto, and, I infer from the correspondence, has placed this and other property in the hands of H. Graham & Son as agents to collect the rents and to receive offers of purchase and submit the same to defendant, but they had no authority from him to make sale agreements.

On 9th December, 1905, Graham & Son received from plaintiff and forwarded to defendant a formal written offer for the property, signed by plaintiff, the price offered being \$14,000, payable \$7,000 cash and balance in 10 half-yearly payments of \$700 each, with interest at 5 per cent. A previous offer of \$13,000 on similar terms had been refused.

In reply to the letter enclosing the last offer, defendant, on 15th December, 1905, wrote the following letter to Graham & Son:—

“Dear Sir:—Your offer from Mr. Bohan of \$14,000 for Yonge street is not what I wish to accept. I told you last summer I would not let it go for less than that amount, but I would not care to sell it on payments.

“I have several times told you that I will not have payments on my properties. I might make an exception as to Danforth avenue, only.

“You told me money loans would now be 6 per cent. when I spoke to you about possibility of borrowing to buy more property.

“Therefore, if Mr. Bohan wants the property, he can get his own loan as suggested in your first letter, and pay me \$14,000 cash, or I will take a straight mortgage for 5 years at 6 per cent., payable half-yearly. If he can get it at 5 per cent. himself, he is welcome to do so elsewhere. If he borrows from the same party who had the loan before, his expense would be small, and the title searched free of cost. Please consider this final.”

And on 20th December Graham & Son, with plaintiff's authority, wrote the following letter to defendant:—

“Dear Sir: Your favour of 15th inst. to hand; in reply we beg to inform you that Mr. Bohan accepts the terms named therein, and will pay the \$14,000 in cash. We enclose blank deed in duplicate, which you can fill out and forward with instructions how to dispose of proceeds.