

cash payment. The \$3,000 returned was applied on this increased cash payment. The defendant having refused to join in the quit-claim deed, negotiations (without prejudice) were carried on between him and the plaintiff without result, as the defendant insisted upon a divided interest, i.e., an allocation of definite lots, while the plaintiff would do nothing better than an undivided quarter interest. The defendant relies, however, on an interview on the 4th August, 1913, as being a recognition on the plaintiff's part of his status as the equitable owner of an undivided quarter interest, and as resulting in an agreement to receive payment for it.

I cannot find that there was any agreement made at that time. The defendant says that the plaintiff told him that there was no use making a tender unless he tendered the whole amount, i.e., the total amount called for in his original agreement with Gordon, or make another agreement. The defendant did not do either, but spoke to the plaintiff's solicitor on the 6th August, 1913, and told him that the matter was ready to be proceeded with, and asked him to get the plaintiff to telephone. The plaintiff's account is that on the 4th August he intimated that he would accept the whole amount, but that the defendant told him afterwards that he could not carry it through unless he got a divided interest, which the plaintiff declined to give. In any case, the defendant did not do what, according to his own evidence, the plaintiff said he must do, and contented himself with an indefinite message. The writ in the present action was issued on the 18th August, 1913. . . .

The plaintiff admits that he knew before he served notice of cancellation on the 1st May, 1913, that the defendant had a quarter interest in the property covered by Gordon's first agreement; but I cannot find as a fact that the plaintiff knew of the written agreement or of its terms, or had any notice of its provisions other than what may be imputed to him from its registration on the 17th February, 1913. No one has said that its terms were disclosed to him; and, as Gordon deposes that it is not expressed in the way he understood his transaction with the defendant, it would be impossible to hold that, until it was recorded, the plaintiff had any notice other than of the fact that the defendant claimed to be entitled to an undivided quarter interest. Gordon and the defendant had never put their agreement into definite form until they signed the agreement, and they now differ as to whether their arrangement has been properly expressed by the writing. It would be hard to impute to the