

sec. 31 within the town limits of Melville, on terms of \$10,000 cash and the balance in one year at 6% with privilege of paying off at any time. After consulting my associates, we have decided to accept your offer. . . . As to these 160 acres, may say some very serious parties in London and Manchester are figuring on the purchase of same at £30, which, deducting commission to agent, is a trifle more than price offered by you. . . . As I am leaving on a trip next week, kindly wire us at our expense, without fail, on receipt of this letter, stating how you want the deal conducted, so I may get the deal fixed up before leaving. . . . Awaiting your telegram, we remain," etc.]

To this letter the defendant replied on the 15th August, as follows: ". . . I arrived home from the west a few days ago, and found your letter of Aug. 4th on my desk, and see by it that you decided to accept the offer that I made your partner when there. I regret, however, to say that I am not in the same position now that I was then. I was quite anxious to secure the 160 acres mentioned when there, but since going to Winnipeg I invested so heavily that I am not in a position to do anything further, which I regret very much. Thanking you for your offer, I remain."

The plaintiffs say that these two letters constitute the contract on which they rely and of which they seek specific performance as against the defendant.

The plaintiffs a little later had their solicitors in Winnipeg prepare and forward an agreement to the defendant. The defendant says that, after he had written his letter to the plaintiffs dated the 15th August, he was approached by F. T. Costello and Thomas Gormeley, a solicitor and real estate agent respectively, at Alexandria, with a proposal to take an interest in some Montreal real estate, but declined. He thereupon suggested to these men that the plaintiffs had the property in question herein and which might still be open for purchase. As a result of this, a telegram was sent to the plaintiffs signed by the defendant on the 26th August, 1910, as follows: "Wire you still open accept my offer one thirty-five." To which the plaintiffs replied on the next day as follows: "Your telegram twenty-sixth received. We confirm our letter fourth in which we accepted your offer of one hundred and thirty-five dollars per acre. Shall send agreement beginning of next week and draw for ten thousand."

On the 29th August following Costello and Gormeley went up to Melville, saw Vaurs, and were also driven out to the property.

The plaintiff Vaurs and the defendant tell very different