

HODGINS, J.A.:—The plaintiff, by agreement of the 1st February, 1912 (exhibit 3), agreed to sell to Gordon, the third party, lots 1 to 17 . . . for \$18,080, of which \$4,000 was then paid down by Gordon. The defendant afterwards and on the 22nd February, 1912, paid \$1,000 to Gordon upon an understanding, but on no definite terms except, that he was to have a quarter interest in the lands Gordon had agreed to buy from the plaintiff. This \$1,000 was no part of the \$4,000. It was not paid until three weeks afterwards, but Gordon apparently kept it and treated the defendant as being interested in the \$4,000 to that extent. No agreement between the defendant and Gordon was drawn up until some time in February, 1912, when exhibit 10, the agreement dated the 1st February, 1912, was prepared and executed by Gordon and the defendant, and registered by the latter on the 17th February, 1912. . . .

Default having been made in the payments under the agreement between the plaintiff and Gordon, the former served notice of cancellation upon Gordon on the 1st May, 1913, and began an action against him on the 3rd May to declare the agreement at an end. On the 22nd May, 1913, the plaintiff accepted a quitclaim deed from Gordon and Brofman (who had become interested with Gordon in the remaining three-quarters interest), which deed is expressed so as to cover the whole title to the lots included in the agreement between the plaintiff and Gordon. The plaintiff then repaid \$3,000 out of the \$4,000 paid by Gordon; and received a letter (exhibit 8) which is as follows:—

“R. L. F. Strathy, Esq., Port Arthur, Ont.

“Dear Sir:—I hereby acknowledge receipt of three thousand dollars, a portion of the amount which I paid you on a certain agreement dated the 1st day of February, 1912, made between yourself and me, with reference to block 62 McVicar addition in the city of Port Arthur. You are hereby authorised by me to retain the balance of the money which I paid to you on the said agreement, namely, the sum of one thousand dollars, to be applied on account of the interest of H. J. Stephens, of the said city of Port Arthur, real estate agent, in a one-quarter undivided interest in the said lands.

“Yours truly,

“A. Brofman.

“M. H. S. Gordon.”

On the same day, the plaintiff agreed to sell an undivided three-quarter interest in the said lands to Gordon and Brofman for the same proportionate consideration as in the earlier agreement with Gordon—the main difference being a much heavier