

commission or deduction of a specified sum. McKay was quite willing that Plummer should become the purchaser, even though he stipulated for this allowance, and the case would be distinguishable on this ground from *Livingstone v. Ross*, [1901] A.C. 327, if Plummer were himself the plaintiff seeking specific performance. . . . When Plummer on the 1st or 2nd January, 1900, accepted the offer orally, it was treated by McKay as an existing offer, and Plummer was then undoubtedly Clergue's agent to accept it, though he did so in his own name.

It may be held, too, upon the evidence, leaving the written offer, as such, out of consideration, that there was then an oral offer and acceptance on the same terms as those mentioned in the writing, and the letter of the 12th January, 1900, is a note of it in writing amply sufficient to satisfy the statute, shewing, as it does, the land, the price, and the name of the purchaser—whether stated in terms to be the agent of plaintiff or not, is immaterial, because he was so in fact—and it is signed by the agent of the owner, whose authority was still in full force and effect. *Mundy v. Osprey*, 13 Ch. D. 855, *Smith v. Webster*, 3 Ch. D. 49, and *McClung v. McCracken*, 3 O. R. 596, distinguished. . . .

The next question is, whether plaintiff is entitled to specific performance of this contract as against defendant Heath, and this depends upon whether the latter was a bona fide purchaser without notice of the contract and the effect to be attributed to the registration of the certificate of *lis pendens* prior to the registration of the conveyance. . . . Upon the evidence, I have no hesitation in finding as a fact that Heath was a bona fide purchaser without notice of plaintiff's contract, for the full consideration expressed in his deed. The deed was executed and a considerable part of the purchase money paid (though this seems not material—*R. S. O. ch. 119, sec. 36*) at least ten days before the action was brought. Heath's title as a purchaser *ante litem* was then complete, and although he had not registered his deed, there is no room for the application of sec. 97 of the Judicature Act, which provides that the instituting of an action in which any title or interest in land is brought in question shall not be deemed notice of the action to any person not being a party thereto until a certificate in the form prescribed . . . has been registered. The object of this provision is to limit or control the application of the former doctrine as to the effect of *lis pendens*, which, as stated in *Bellamy v. Sabine*, 1 DeG. & J. 566, cited in *Price v. Price*, 35 Ch. D. 297, broadly was, that *pendente lite* no one could alienate the property in