

OSLER, J.A.—One Rutherford, who appears to have been desirous of bringing about a sale in order to obtain a commission for himself, had been asked by the plaintiff if he had the sale of the land in question. In point of fact Rutherford had not, and on 8th February, 1901, he wrote to defendant, who was in Winnipeg, stating that he had an inquiry about the land, and . . . after some correspondence, Rutherford wrote defendant on 18th April that the party who wanted to buy would go \$100 over his former offer of \$2,000, and asking defendant to wire if he concluded to accept. The defendant made no reply, and in fact no such offer of \$2,100 had ever been made by the plaintiff.

On the 29th April the plaintiff wrote and handed to Rutherford the following offer:—"I, William J. White, hereby offer to William M. Malcolm, of the city of Winnipeg, the sum of \$2,100 cash for park lot No. 6, 2nd range, in the town of Owen Sound."

This was the first and only time the plaintiff had made such an offer; it was not communicated to the defendant; but on the same day Rutherford telegraphed to defendant: "Will \$2,100 cash take park lot. Answer." And on the same day defendant replied: "Accept offer, but will not sell the house now." The latter part of the telegram referred to other property of defendant, which Rutherford had some time before been specially authorized to sell. Rutherford shewed this telegram to the plaintiff, but nothing further passed between the parties until the 2nd May, when Rutherford wrote defendant enclosing for execution by defendant and his wife a conveyance which he had at his own expense caused to be prepared by a solicitor. In this letter he says: "Mr. Wm. J. White came to me and offered \$2,100, as I telegraphed you, and which you replied I was to accept. Mr. White thinks the offer he made to you a very good one, but it is his own, and he will have to be satisfied." The defendant declined to negotiate further, and on the 11th May this action was brought. Throughout the correspondence Rutherford was not the agent of either party for the purpose of making a contract except in so far as he may have been made the defendant's agent by the latter's telegram of the 29th April. It is doubtful whether that ought to be read as meaning an acceptance by the defendant himself—I accept offer—referring to the offer untruly stated in Rutherford's letter of the 18th April to have been made on the previous day, or as a direction to Rutherford to accept that or any other offer which might be made to buy at the