

FALCONBRIDGE, C.J.

JANUARY 7TH, 1902.

TRIAL.

AITCHESON v. MCKELVEY.

*Specific Performance—Agent—Fraud—Amendment—Delay.*

Action tried at Hamilton brought by administratrix of estate of Ellen Butler, deceased, for specific performance of agreement by defendant, made with one Bowerman, to purchase certain property in the city of Hamilton.

A. O'Heir, Hamilton, for plaintiff.

J. L. Counsell, Hamilton, for defendant.

FALCONBRIDGE, C.J.—The defendant, and his wife, and sister, all admit on cross-examination, that the agreement which he claims to have made with plaintiff's agent, Bowerman, that the necessary money should be raised on mortgage of the property in question, and a lot which defendant had placed in Bowerman's hands, was an agreement with Bowerman, personally, and not with the Butler estate, which they all knew had to get its money. And so they have easily persuaded themselves, that this understanding or arrangement was read out by Bowerman as part of the contract which defendant signed. Issue was joined on October 31st, 1901, and it was not until January 2nd, 1902, that defendant sought to amend charging fraud. It is too late to do so. The defence fails. Judgment for plaintiff with costs.

Staunton & O'Heir, Hamilton, solicitors for plaintiff.

MacKelcan & Counsell, Hamilton, solicitors for defendant.