

life. He is one of the executors under the will of the plaintiff's father and has taken an active part in the management of the estate, and out of it provided money for the maintenance of the family, who were entitled to it. In this way there were long years of intimacy between Mr. Smart and the plaintiff and her mother. This appears to have been the reason that the plaintiff wanted to consult with Mr. Smart before concluding the bargain for the sale of the farm to the defendant. Mr. Smart is also deputy sheriff still under the successor in office of the plaintiff's father.

After the interview between the plaintiff and the defendant above mentioned at which they had agreed upon the price of the farm, the plaintiff sent for Mr. Smart. She told him how the matter stood; that she was to get \$7,000 for the farm, \$4,000 in cash and \$3,000 left upon a mortgage upon the farm for five years at 4 per cent. interest. He, as it appears, advised her to take in ready money a less sum, \$3,500 and to have \$3,500 on the mortgage, and that he thought she should have 5 per cent. interest upon the mortgage money. She (the plaintiff) then instructed Smart to see the defendant and if he would agree to these terms to conclude the contract, leaving him at liberty to conclude it even if he could not get the 5 per cent., and it was then stated that Mr. Dingwall should draw the documents or act as the solicitor for the plaintiff in the conveyancing. In other words, the plaintiff chose Mr. Dingwall to draw the papers. Mr. Smart saw the defendant, who, after discussion and some hesitation, agreed to the proposals. The defendant also selected Mr. Dingwall as his solicitor in the conveyancing. Mr. Smart and the defendant then went to Mr. Dingwall's office and gave him instructions to draw a deed of the farm and the mortgage back securing the half of the purchase money. Mr. Dingwall said that he had not time that day to draw the deed and mortgage, and further said that a sum of money might be paid and a receipt taken for it, he being, as it appears, of the opinion that this would preserve matters in statu quo until the formal conveyancing could be done, and while drawing the receipt he, Mr. Dingwall, remarked that it would be well to insert in it a note or memorandum of the agreement, which he did, and when he had it ready he handed it to Mr. Smart, telling him to get it signed by the plaintiff, giving him, Smart, also a cheque for \$100 to be handed to the plaintiff. This document is as follows:—

“100.

Cornwall, March 6, 1903.

Received from James Gardner the sum of one hundred dollars on account of his purchase from me of east half lot 3 in the front or first concession of the township of Cornwall;