by the obligor,—and it is not shewn that any stipulation of this kind was known to, or assented to, by *Boyd. Mary* the wife never heard of it. Taking the whole instrument together I think the agreement was for a conveyance in fee simple, and that the obligor expressed a wish merely as to its ultimate destination, which does not qualify or modify the agreement.

As to the application to be permitted to file a supplemental answer, the facts seem to be, that just before the hearing in October an application for that purpose was made to the Referee, and refused by him; and although such leave was asked at the hearing, it was not supported by any evidence, the affidavits not having been procured from Toronto, that had been used before the Referee; and although the defendants were in Court neither of them was examined, though certainly they were the best qualified to speak of a mistake, had any been made. The date when issue was joined does not appear on the brief, nor when the answers were filed, though they seem to have been sworn on the 28th March. No explanation is given of the delay in making the application,—it is contradictory to the case made by the answer, which rested on no bond having been executed,—it is for the purpose of proving a mistake after the death of the obligee, without any allegation that it can be established by any writing; and I think it would not be safe to permit it to be proved by the evidence of persons who have sworn so recklessly as these defendants have done. The defence throughout hitherto has been that no bond was executed, that it was voluntary; failing both these, it is now sought to set up a defence applicable to an instrument executed for a good consideration.

Judgment.

The affidavit of *Shouldice* the elder, used before the Referee, does not swear to any mistake having been made in the bond, does not say that the obligatory part of it was erroneous, and did not truly express the intention of the parties.