

"And as a further consideration for the said Kennedy this day releasing the said lands from his caution and his other rights in an action now pending . . . which action shall be dismissed without costs, Harris is to agree with Kennedy that he shall, in case the annexed option is not carried out and completed, that he will on or before the 1st day of June, 1912, pay to Kennedy the sum of five thousand dollars."

The contract then provides that (1) the parties shall be partners, (2) the defendant shall be the selling agent while not in default; "but no sale . . . is to be had or made by Harris without Kennedy's written consent unless Kennedy's share of the profits shall equal \$7,500, which shall be guaranteed by Harris in the ultimate result of the transaction."

"3. Harris is to furnish all the moneys required for the purpose of carrying out the said option, and, in case he fails to carry out the said option and complete the purchase, he is then, within one month after default, on or before the 1st day of June, 1912, to pay to Kennedy the sum of five thousand dollars.

"4. Harris shall make the election and make each of the payments called for by the annexed option at least one month prior to the date named for such payment, work, or notice or election, and shall at once notify Kennedy in writing where and when such payment was made. If Harris fails in carrying out the said option, or in doing the work or making the election or in making the payments called for thereby or thereunder, as herein set out, Kennedy shall thereupon be entitled to exercise the said option for his own benefit, as to him seems best, and Harris shall have no rights or interest in said option or thereunder."

"5. Kennedy agreed to release his caution and dismiss his action.

"6. If it becomes necessary in carrying out this proposed purchase, and the parties shall mutually consent to any changes, or if they cannot agree in the changes, the dispute between them shall be settled by W. N. Ferguson, and his decision shall be final as to what changes shall be made."

There are other provisions not material to be mentioned.

The plaintiff discharged his caution and action; the defendant went on with his option. In July, he asked the plaintiff to permit a change in the work, which, by the contract between them, was to be done in July, but by the "option" could be done in August. The plaintiff refused unless \$2,000 were paid into the bank as security that the work would be done. The defendant refused this. Mr. W. N. Ferguson, being spoken to, said that he thought the plaintiff's condition perfectly fair.