

virtue of that agreement or otherwise." The instrument also in plain language declares that at its date John E. McConnell is the beneficial owner. No fraud in procuring his signature to this instrument is suggested, and in the absence of fraud it must, I think, be taken as shewing the real agreement between the parties. Even if up to the time of executing it Thomas McConnell desired to reserve to himself the equity of redemption, he must be held to have abandoned that wish when he executed the agreement. Shortly thereafter Thomas McConnell endeavoured to negotiate a sale of the property, and employed Mr. W. Middleton Hall, barrister, Toronto, to act for him. Thereupon that gentleman put himself in correspondence with Mr. Smoke informing him that Mr. McConnell was endeavouring to arrange to acquire the property by paying the defendant's claim, and asking for a statement. This was furnished him, and a somewhat lengthy correspondence took place between Mr. Hall and Mr. Smoke as to the correct amount. During the course of this correspondence, Mr. Smoke several times reminded Mr. Hall of the date when the option would expire, giving him to understand that there would be no extension, and that if the money was not paid within the time Thomas McConnell would cease to have any interest.

At no time during this correspondence did Mr. Hall or Mr. Thomas McConnell take exception to Mr. Smoke's construction placed upon the transaction.

On the 14th of March, 1907, Mr. Thomas McConnell wrote to the defendant in these words: "John E. McConnell, Esq., Dear Sir:—Re Yonge street property: Be good enough to, under the option held by me from you in regard to the purchase of" (referring to the land in question) "convey the same to Thomas H. Simmons of the city of Toronto, Esq., and this shall be sufficient authority, and upon the execution and delivery of said conveyance, as aforesaid, the said option shall be exercised to the same extent as if the said conveyance were to myself."

On the 16th of March, 1907, four days before the expiry of the option, Mr. Smoke's firm wrote to Mr. Hall as follows:—

"Mr. John E. McConnell has been enquiring of us to-day about the progress made by Mr. Thomas McConnell in connection with his expressed intention to exercise the option of purchase of the Yonge street property under his agreement with Mr. John E. McConnell. We write to you of