

Then again Thomas McConnell agreed with the defendant to have the property conveyed to him—he, Thomas McConnell. “to have three months within which to take the property off the owner’s hands at what it had cost the son to buy the property back,” according to the evidence of Mr. Smoke.

Thomas McConnell and the defendant then instructed Mr. Smoke to prepare the necessary papers for carrying out the agreement, and the latter then caused to be prepared the deed in question in this action, bearing date the 20th December, 1906, from Simmons to the defendant, and the contemporaneous agreement between Thomas McConnell and the defendant, securing to the former the right of repurchase within three months. The deed vested the property in the defendant in fee simple, subject to the existing incumbrances, and the contemporaneous instrument is worded as follows:—

“Agreement made this 20th day of December, 1906, between John E. McConnell, of the first part, and Thomas McConnell, of the second part, witnesseth that, in consideration of the sum of \$1 now paid by the party of the second part to the party of the first part, the party of the first part hereby gives and grants to the party of the second part, or his nominees, the right, at any time within three months from the date hereof, of purchasing from the party of the first part the property now belonging to the party of the first part and known as” (describing the land in question) “at a price equal to the now existing mortgages and other incumbrances, charges, and liens upon the said lands, and interest thereon according to the terms of the said mortgages, together with all costs which have been incurred or may hereafter be incurred by the party of the first part in respect of the said property, and all moneys which may be hereafter paid by the party of the first part in respect of the said properties, . . . The party of the second part, in the event of his exercising the said option or right, must accept the title of the party of the first part as it stands and must bear all expense to which the party of the first part may be put in carrying out the said sale. Time is strictly of the essence of this agreement; and, unless the said option or right shall be exercised and the transaction wholly carried out within the said period of three months, the party of the second part and his nominees shall have no right whatever in or to the said property under or by virtue of this agreement or otherwise howsoever.” (Signed and sealed by the parties.)

Whether this transaction was a mortgage transaction to