

K. was not informed of his remaining liability towards M. as surety.

Held, per SEDGEWICK, GIROUARD, DAVIES and IDINGTON, JJ., reversing the judgment appealed from (11 B.C. Rep. 402) that the secret dealings by the corporation with K. and with respect to the debts and securities were, constructively, a fraud against both K. and M.; that the release of the principal debtor discharged M. as surety, and that he was entitled to recover the surplus of what the corporation received applicable to the notes indorsed by him as money had and received by the corporation to and for his use.

Per MACLENNAN, J., reversing the judgment appealed from (11 B.C. Rep. 402) that, on proper application of all the money received, the corporation had got more than sufficient to satisfy the amount for which M. was surety and that the surplus received in excess of what was due upon the notes was, in equity, received for the use of M. and could be recovered by him on equitable principles or as money had and received in an action at law.

Appeal allowed with costs.

Aylesworth, K.C., and *Deacon*, for appellant. *Davis*, K.C., for respondents.

Man.] GILMOUR v. SIMON. [April 14.

Principal and agent—Sale of land—Authority to make contract
--Specific performance.

The defendant gave a real estate agent the exclusive right within a stipulated time, to sell, on commission, a lot of land for \$4,270 (the price being calculated at the rate of \$40 per acre on its supposed area), an instalment of \$1,000 to be paid in cash and the balance, secured by mortgage, payable in four annual instalments. The agent entered into a contract for sale of the lot to the plaintiff at \$40 per acre, \$50 being deposited on account of the price, the balance of the cash to be paid "on acceptance of title," the remainder of the purchase money payable in four consecutive yearly instalments and with the privilege of "paying off the mortgage at any time." This contract was in the form of a receipt for the deposit and signed by the broker as agent for the defendant.

Held, affirming the judgment appealed from (15 Man. Rep.