

MAGEE, J.:—The agreement of 13th May, 1903, was under seal, and purports to be made between plaintiff and defendant, but to be executed only by plaintiff. After reciting that plaintiff had, in consideration of \$200 paid by defendant, agreed to sell and convey the land in question and some personal property to defendant, upon the terms and conditions thereafter contained, plaintiff, in pursuance of that agreement and in consideration of the \$200, covenanted with defendant that she would convey the property to him on payment to her of \$6,800, less the amount of an existing mortgage, at any time between the date of the agreement and 1st January, 1904. It proceeds: "The purchaser shall pay off the said mortgage according to the terms thereof and save the vendor harmless therefrom;" and a provision is inserted for defendant getting possession before 1st January, 1904, on paying \$1,000 before 15th June, 1903.

It is said upon both sides that this was intended to be and was a mere agreement for an option to purchase. Nothing more than the \$200 was paid by defendant. He registered the agreement in the registry office on the day after its date. Plaintiff contends that it forms a cloud upon her title which she desires to have removed.

Before action, application was made to defendant to execute a release, and about 10th June, 1905, a quit claim deed was tendered to him for execution. He refused, alleging that he had not exercised his option, and, as he had forfeited the \$200, he had nothing more to do with the property, and was not bound to execute a release.

This action was begun immediately afterwards. After the service of the writ of summons and before statement of claim, defendant announced his willingness to sign the quit claim, but not to be liable for any costs. Plaintiff refused to accept it on those terms, but offered to leave the question of costs to the local Judge or to the Master in Chambers. This defendant would not accede to, and the pleadings followed, and the parties came down to trial, nothing being in question but the costs.

The statement of claim asks that it may be declared that defendant has no right to or interest in the lands under the agreement, and that the same may be declared a cloud upon her title, and that defendant may be ordered to execute such document as may be proper to clear her title.

The statement of defence says that the time for payment of purchase money and performance of the agreement expired