

At this time, Thomas McConnell was erecting buildings on the land, intending in the near future to effect a larger loan wherewith to pay for the buildings.

In October, 1905, he applied to Mr. Smoke for a further advance, which was refused unless McConnell gave further security. McConnell then applied to his son, the defendant, for assistance, and the latter, for his father's accommodation, on numerous occasions, gave to him his promissory notes for sums amounting to between \$3,000 and \$4,000, and these notes Thomas McConnell discounted with Mr. Smoke.

Thomas McConnell having made default in payment for the buildings, mechanics' liens were registered against the land, and proceedings were taken to realise on these liens, Mr. Smoke being a party defendant in those proceedings. On their culminating in a judgment, he, with the consent of Simmons and Thomas McConnell, paid the amounts owing, and obtained a further mortgage to secure the amount then due to him, being something over \$8,000; John E. McConnell still remaining liable to Mr. Smoke in respect to the notes above-mentioned. Subsequently, interest on this mortgage falling into arrear, Mr. Smoke, in October, 1906, began power of sale proceedings, when Thomas McConnell applied to the defendant for his assistance towards obtaining their discontinuance.

It was then agreed between Thomas McConnell and the defendant that, if the defendant would secure a discontinuance of the proceedings by becoming liable to Mr. Smoke for the amount of his mortgage-claim, Thomas McConnell would cause the property to be conveyed to him for his own use, on the condition that he should be given the option of repurchasing it within three months.

In pursuance of this agreement, the defendant gave to Mr. Smoke his written undertaking (to which his father was a party) whereby the defendant undertook with Mr. Smoke that "unless your (Smoke's) claim is otherwise paid by the 31st November, 1906, I will then pay your claim, including principal, interest, and costs; you at the same time assigning to me your securities."

In consideration of this undertaking, Mr. Smoke discontinued the sale proceedings, whereupon Thomas McConnell refused to carry out his promise to have the property conveyed to the defendant. In consequence, the defendant, by letter of the 3rd December, 1906, requested Mr. Smoke to bring the property to a sale; and, accordingly, Mr. Smoke again instituted sale proceedings.