

the plaintiff, and therefore the plaintiff's original claim against defendants remains in force. . . . I am unable however to agree with that part of the judgment which discharges Campbell. The agreement of 17th November, 1900, is perfectly explicit, and the consideration which supports it is the receipt of the \$962.84 upon the express promise on his part to pay amount of Webbs' account for the brick-work in question, and which, under his original agreement with defendants, he was bound to pay . . . Wylie's promise to use his influence with the directors was purely a private matter between him and Campbell, and is not a promise upon which defendants are liable, and is, moreover, vague in its character, and does not excuse Campbell from liability. This is one of the cases in which the rule of evidence against allowing a party to a written document to give evidence of a conversation happening just before its execution, with the object of contradicting its terms, must be applied: *Goss v. Lord Nugent*, 5 B. & Ad. 58; *Taylor on Evidence*, sec. 1132. The rights which very possibly Campbell might have made good against the company, he chose with his eyes open and for good consideration to abandon, and to rely on its mere good-will. There is no ground in law or in equity upon which he should be allowed to withdraw from his contract, and the judgment should therefore be varied by directing Campbell to pay to defendants the sum found due by defendants to plaintiff, together with the costs incurred by the defendants in bringing Campbell in as a party, and of the trial of their claim against him as a third party. The defendants are not to recover from Campbell the costs taxed against them by plaintiff, because they have failed in their contention that they were not liable to him, upon which contention these costs were principally incurred. The defendants are to pay to plaintiff his costs of appeal, which is dismissed as far as he is concerned. They are to recover against Campbell their costs of appeal, having succeeded against him.

Code & Burritt, Ottawa, solicitors for plaintiff.

McLaurin & Millar, Ottawa, solicitors for defendants.

Bishop & Smith, Ottawa, solicitors for third party.

Moss, J.A.

FEBRUARY 7th, 1902.

CHAMBERS.

RE MARGARET EVANS.

Will—Construction—Legacy—Not Absolute Gift nor yet Life Interest
—*Discretion of Executors.*

Re Sanderson's Trust, 3 K. & J. at p. 507, applied.