

HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B.: — By indenture of lease dated 15th January, 1912, defendant leased to plaintiff McNeil for 3 years the lands in question, and it was "understood and agreed" in and by said lease, that the said lessee, McNeil, his heirs, executors, administrators and assigns should have the right to purchase same at any time during the said term at a price per foot frontage on Murray street.

And the lessee McNeil covenanted that he would "not assign or sub-let without leave, but such leave shall not be wilfully or arbitrarily withheld."

After vainly endeavouring to get defendant's consent to an assignment by plaintiff McNeil to plaintiff Cornish, plaintiff McNeil, by indenture dated 8th February, 1913, assigned the said lease and the said option to his co-plaintiff Cornish.

And plaintiff Cornish, after applying without success to defendant for his consent to an assignment by him to a realty company, signed a memo. agreeing to sell the said lease and option to the said company.

It is needless to say that both these assignments were at a profit to the vendors.

Plaintiffs now bring this action, claiming an order directing defendant to execute such instruments as may be necessary to give consent to above assignments and agreement.

Mr. Mowat announced that he offered no evidence to support par. 4 of the statement of defence (that defendant signed without competent and independent advice and did not understand the meaning and effect of it, etc.)

Paragraph 5 as to defendant's alleged understanding of instrument was not only not supported by evidence, but it was shewn to be utterly false by the testimony of an independent solicitor and his stenographer, who proved that it was read to defendant and that he perfectly understood the same.

Then as to the facts in dispute—which are principally as to conversations with defendant by different persons trying to get him to execute a consent—I have no hesitation in giving credence to plaintiffs and their witnesses as against the defendant. This I do having regard to the demeanour of the deponents and by the application of the other standards adopted by jurists, in determining the relative value of conflicting statements.