

Plummer died on the 13th October, 1911; after his death, his executors found among his papers another document bearing the same date, signed by Plummer alone, and which, save the last clause, was substantially a copy of exhibit 2. The last clause was: "I further agree to assign the aforesaid one undivided half-interest to you or your assigns whenever you demand same, or, if you prefer to leave title in me, I will give you a declaration of trust that I hold said half-interest for you."

Entries in Mr. Plummer's land-sales book also referred to the transaction as a sale of a half-interest; there was a credit entry of \$1,000 on the 22nd May; and a letter written by Mr. Plummer to the plaintiff in 1908 referred to the purchase of a half-interest.

There was further correspondence, which the learned Judge set out; he also summarised the oral evidence taken at the trial; and referred to the following cases: *Higham v. Ridgway* (1808), 10 East 109, Sm. L.C., 11th ed., p. 327; *Regina v. Overseers of Birmingham* (1861), 1 B. & S. 763; *Regina v. Exeter Guardians* (1869), L.R. 4 Q.B. 341; *Davies v. Humphreys* (1840), 6 M. & W. 153; *Taylor v. Witham* (1876), 3 Ch. D. 605; *Doe dem. Rowlandson v. Wainwright* (1838), 8 A. & E. 691; *Regina v. Inhabitants of Worth* (1843), 4 Q.B. 132; *Massey v. Allen* (1879), 13 Ch. D. 558; *Crease v. Barrett* (1835), 1 C.M. & R. 919; *Smith v. Blakey* (1867), L.R. 2 Q.B. 326; *Newbould v. Smith* (1885), 29 Ch. D. 882.

The learned Judge said that he was inclined to the view that the entries in Plummer's book were entirely self-serving; but the effect of the cases was to make the evidence admissible; and the question then was, what weight should be given to it?

The statements and entries could have no greater effect in favour of the deceased than an oral statement made by him under oath if he were alive and in the witness-box. The case would then stand thus: a written contract in the deceased's own handwriting, clear and unambiguous in its terms; the statement of the plaintiff, substantially unshaken, that this was the true bargain; the statement of the deceased that the bargain was quite different from that evidenced by the document he drew and delivered. There was also other strong evidence which shewed the improbability of the plaintiff's purchasing a mere undivided half-interest. The onus upon the defendants had not been met.

*Judgment for the plaintiff for specific performance, with costs.*