

in question) at a price equal to the now existing mortgages and other encumbrances, charges and liens upon said lands and interest thereon according to the terms of the said mortgages together with all costs which have been incurred or may hereafter be incurred by the party of the first part in respect of the said property and all moneys which may be hereafter paid by the party of the first part in respect of the said properties whether upon or in reduction of the said mortgages, etc., or for repairs to the buildings on the said lands or for insurance or taxes or for any cause whatsoever. The party of the second part in the event of his exercising the said option or right must accept the title of the party of the first part as it stands and must bear all expense to which the party of the first part may be put in carrying out the said sale.

Time is strictly of the essence of this agreement and unless the said option or right shall be exercised and the transaction wholly carried out within the said period of three months the party of the second part and his nominees shall have no right whatever in or to the said property under or by virtue of this agreement or otherwise howsoever.

In witness whereof the parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of

} (Sgd.)	“ T. McConnell ”	(seal)
	“ J. E. McConnell.”	(seal)
	“ S. C. Smoke.”	

Whether this transaction was a mortgage transaction to secure the defendant in respect of his suretyship for his father or an actual sale with a right of re-purchase is the real issue here. If the latter then the condition that on failure to exercise the option within the stipulated time Thomas McConnell should lose his right to re-purchase is not a penalty or forfeiture but a privilege and its terms must be strictly complied with.

*Barrell v. Sabine*, 1 Ver. 268; *Perry v. Meadowcroft*, 4 Beav. 202; *Gossip v. Wright*, 9 Jur. Part 1, 592; *Shaw v. Jeffrey*, C. R. [3] A. C. 483.

Mr. MacGregor seemed to attach much weight to *Samuel v. Jarrah Timber and Wood Paving Corporation*, [1904] A. C. 323, and other cases of that nature, but they can have no application to this case. Those are all cases in which as part of the original transaction the borrower conveyed to the lender the estate as security by instrument absolute in form