

he signified his acceptance in some binding manner, and, if he wished to turn the offer into a binding contract against Sears, he was obliged to accept, either verbally or in writing. In like manner Sears was entitled to withdraw before acceptance. No consideration of any kind was paid by the plaintiff to him for the giving of the option, and he was under no obligation to hold it open for a stipulated time. He was at liberty to withdraw at any time before acceptance by the plaintiff, and to deal with any one for the sale or purchase of the property.

This is scarcely denied, but it was urged for the plaintiff that the memorandum is an instrument under seal, and a consideration between the parties is, therefore, to be conclusively presumed, because the seal imports a consideration, and so Sears was bound to keep the offer open until the 14th September had expired.

When it is proposed to invoke the legal fiction for the purpose of giving to the memorandum all the force and effect accruing from the actual payment or receipt of a valuable consideration, it is but reasonable and just to require the person seeking to attach that virtue to it to shew by convincing proof that the memorandum was in fact duly sealed as well as signed by the contractor.

The question whether it was or was not sealed is one of fact, and, upon the evidence, I find it impossible to conclude that the memorandum was so executed as to give it the effect of a sealed instrument.

And I think this conclusion may be reached without detracting from the value of *Hamilton v. Dennis*, 12 Gr. 325, *In re Sandilands*, L. R. 6 C. P. 411, *In re Bell and Black*, 1 O. R. 125, and *In re Croome and Municipal Council of Brantford*, 6 O. R. 188, and cases similar to them. See *National Provincial Bank of England v. Jackson*, 33 Ch. D. 1.

Upon this short ground, in addition to those dealt with by my learned brothers, I think the judgment appealed from should be affirmed.

OSLER, J.A. (after setting out the facts):—It is said that the option was extended by an agent of the grantee, by her authority, by a letter of 30th August. The agent, one Teepell, wrote to Mr. George Ritchie, who may be assumed to have been acting in this respect for the plaintiff, acknow-