

Notwithstanding these acts of the bookkeeper, it is clear to my mind that John Harvey would have been entitled to recover from John McKay the said sum of \$2,406.02, and therefore the making of these entries in no way prejudiced defendant as surety.

Paragraph 4 of the report finds "that the \$1,000 was included and merged in a mortgage in the account "A" attached thereto, given by defendant to John Harvey for \$12,000; that John Harvey agreed to release and discharge the mortgage for \$9,000; and that, instead of the \$9,000 being paid in cash, John Harvey accepted in lieu thereof a release of the equity of redemption from defendant, and discharged and released defendant therefrom."

This conclusion the referee has drawn from his interpretation of the correspondence between the parties. I confess I am unable to put this interpretation upon it. The only proposal binding upon John Harvey is contained in his letters of 2nd and 3rd April, 1884, the effect of which, as I read them, is that he agrees to accept \$9,000 in cash in satisfaction of the \$12,000 mortgage and two accounts appended thereto and an account against John McKay as of 30th April, 1881, of \$2,076.51.

The only reference which I find he makes to the policy in question is at the close of his letter of 3rd April, in which he says: "I hold a policy of insurance paid up on John McKay's life for —— against which I advanced you \$1,000 cash, which if paid will retransfer to you the policy of insurance."

Even if the \$9,000 had been paid, which it was not in fact, nor was the subsequent release and sale to Dixon accepted in lieu of the \$9,000, I think it would not have entitled defendant to a retransfer of this policy. I think the only interpretation which can be put upon the letter is that he would retransfer the policy upon payment of the \$1,000 in cash, independently of the \$9,000 proposition.

The referee in his judgment concludes that the account "A," \$1,677.92, included this \$1,000 note. I think he is mistaken in this, as I think that, as originally made up at \$1,677.92, it included a \$1,000 note of one Duncan, and had no reference to the note in question.

The 5th finding of the report is in effect that defendant, being a surety for the payment of the \$1,000 given to her