

The defendants alleged that the effect of the documents, which consisted of a formal agreement, signed by the original parties thereto, dated the 6th May, 1908, and a joint letter from the same parties to the defendants the Royal Trust Co., enclosing the agreement and certain title deeds relating to the lands to be by that company held in escrow for both parties, was a completed agreement to purchase, and not an option, and that, in any event, they had exercised the option to purchase within the time limited by the agreement and the joint letter; and they claimed specific performance.

The agreement was expressed at the beginning of it to be an "option," and by the terms of it the purchase money, \$250,000, was made payable as follows: \$12,500 at the execution of the agreement; \$37,500 on the 6th May, 1909; \$50,000 on the 6th November, 1909; \$50,000 on the 6th May, 1910; \$50,000 on the 6th November, 1910; and \$50,000 on the 6th May, 1911. And it was agreed that the down payment of \$12,500 was to be regarded as the price of the option, and was to be forfeited if the option was not exercised, but, if exercised, was to be regarded as part payment of the purchase-money. The joint letter, which was prepared by the solicitors who drew the agreement, after reciting the various documents relating to the title which were enclosed, proceeded: "It is agreed that the said William Marshall or his assigns shall have sixty days' grace for the payment of each of the instalments. . . . It is also agreed that the payment of each instalment is to be made by William Marshall to you, and that you will then pay over to Robert Gilmour Leckie the amount received by you. It is expressly understood that, in the event of the instalments of \$37,500 due on the 6th May, 1909, of \$50,000 due on the 6th November, 1909, and of \$50,000 due on the 6th May, 1910, not being paid within the sixty days agreed upon, the agreement of option shall become null and void. . . ."

The appeal was heard by Moss, C.J.O., OSLER, GARROW, and MACLAREN, J.J.A.

A. W. Anglin, K.C., and J. Wood, for the plaintiffs.

G. F. Shepley, K.C., and G. Bell, K.C., for the defendants Marshall and the Grey's Siding Development Co.

J. A. Worrell, K.C., for the defendants the Royal Trust Co.

Moss, C.J.O., said that upon this appeal four questions were presented for determination: first, as to the nature of the instrument of the 6th May, 1908—whether it was an option to buy the