

The action was tried without a jury at Kingston.

A. B. Cunningham, for the plaintiffs.

T. J. Rigney, for the defendant.

SUTHERLAND, J., stated the facts in a written judgment, and found that the defendant promised and agreed that the deed from the plaintiffs should be subject to a term that he would not dispose of the lands thereby conveyed to him, but hold them as security for the payment to him by Thomas J. Boon of his indebtedness to the defendant.

The learned Judge said also that the plaintiffs were cognizant of the criminal offences of their brother, had heard of the threats of the defendant to prosecute, and were actuated by a desire to prevent his doing this. On the very day that the deed was executed, he repeated the threats to prosecute, and this became known to the plaintiffs. Having learned on that day that the concern of the plaintiffs was such as to lead them to offer their property to be used for the purpose of raising the money, the defendant asked for a deed. He must have known that the deed he thus obtained was made in view of his threats to prosecute, and that there was an implied term of the agreement under which it was given that there should be no prosecution.

Reference to *Jones v. Merionethshire Permanent Benefit Building Society*, [1891] 2 Ch. 587, [1892] 1 Ch. 173; *Flower v. Sadler* (1882), 10 Q.B.D. 572, 576; *Lound v. Grimwade* (1888), 39 Ch.D. 605; *Leggatt v. Brown* (1898-9), 29 O.R. 530, 30 O.R. 225; *Leake on Contracts*, 5th ed. (1906), p. 510; *Halsbury's Laws of England*, vol. 7, p. 398.

Judgment for the plaintiffs as prayed with costs.

SUTHERLAND, J.

NOVEMBER 22ND, 1916.

NORTH-WESTERN NATIONAL BANK OF PORTLAND v. FERGUSON.

Promissory Note—Action against Maker—Defence—Fraud and Collusion—Failure to Prove—Guaranty—Time Extended for Definite Period by Arrangement with Principal Debtor—Release of Guarantor.

Action against two defendants, father and son, upon a promissory note for \$3,000 made by the son in favour of the plaintiffs,