

The manager of the defendant company stated that he turned over to Moyer all communications which were received from plaintiffs; Moyer did not in any way communicate this to plaintiffs, and did nothing to remove any impression they had that they were contracting with defendant company. I think I am not going too far in holding Moyer liable as well as his co-defendants.

There will, therefore, be judgment in favour of plaintiffs for re-payment of the \$1,000 paid by Pearson to defendant company, and interest thereon from the date of such payment; for a return of the \$2,000 promissory note made to defendant company, with costs of the action to the present time; and a reference to the Master in Ordinary to ascertain the damages sustained by plaintiffs. Further direction and further costs are reserved until the Master shall have made his report.

HON. MR. JUSTICE KELLY.

JANUARY 31ST, 1913.

SMITH v. BENOR.

4 O. W. N. 734.

*Deed—In Trust—Refusal to Reconvey—Fraud—Statute of Frauds  
no Defence—Amendment—Set-off—Reference.*

KELLY, J., *held*, in an action for a declaration that certain property conveyed by plaintiff to defendant was conveyed to him as trustee only and for a reconveyance and damages, gave effect to plaintiff's claim and ordered a reconveyance and \$5 damages, with costs.

"The Statute of Frauds does not prevent proof of a fraud."

*Rochejoucauld v. Bousted*, [1897] 1 Ch. 196, and

*McMillan v. Barton*, 20 S. C. R. 404, followed.

Action for a declaration that a certain deed from plaintiff to defendant, and the registration thereof, was void, and for a reconveyance of the property purporting to be conveyed thereby and damages for refusal to reconvey, tried at Belleville, without a jury.

McGregor Young, K.C., for the plaintiff.

W. C. Chisholm, K.C., for the defendant.

HON. MR. JUSTICE KELLY: — Plaintiff is the son of Charles Smith, who, in his lifetime, carried on a milling business at Campbellford. Charles Smith died on March 12th, 1907.