

I find that the plaintiff, when he authorised Vigeon to sign the paper, did so believing that it was for an option, and that Mr. Lawrence, in drawing up the paper, understood that the plaintiff thought it for an option, and that, in putting up \$5,000, he—Vigeon—was entitled to have that sum returned if the option was not exercised by Vigeon on the plaintiff's behalf, or on behalf of whom it might concern.

The document was drawn by Mr. Lawrence at his own office, neither Vigeon nor the plaintiff being present. It is in form an offer to purchase, but, in my opinion, it is not an unqualified offer—so that the sum of \$5,000, represented by the plaintiff's cheque, can be applied as on account of purchase-money, or be forfeited, if purchase not carried out. The document compels the return of the \$5,000 "if contract not completed." I must interpret these words "not completed" as if the words were "not carried out." The document now in question, and relied on by the company, makes very clear the distinction between the way of treating the \$5,000 paid under option to Bicknell, and the \$5,000 deposited by the plaintiff.

The first \$5,000 had been forfeited and was to remain forfeited; but the \$5,000 put up by the plaintiff, and now in question, was "to be returned, without interest, if contract not completed." If by the completion of the contract was meant getting the company to accept the plaintiff's so-called offer, there was no reason for anything in regard to the return of that money. If the meaning was, that the plaintiff should go on and carry out a purchase under an already completed written contract, then, if the plaintiff failed, he would have no right to a return of this money; but, if the company failed to make title, or if from any cause they failed to carry out their part of the contract through no fault on the part of the plaintiff, then the plaintiff would be entitled, as of right, to a return of the deposit. The return of the money mentioned in the writing does not refer to any such case. As I view this transaction, the money was put up to satisfy Mr. Lawrence that the defendant Vigeon was acting for a person or persons of substance—not men of straw. The return provided for is a return in case the contract is not completed by an actual purchase by Vigeon or persons for whom he was acting, and sale by the defendant company of the property mentioned, upon the terms set out in full. Even if the document is not a mere option, it is at most an executory contract, containing a term or proviso which should be interpreted to mean that, if Vigeon or the plaintiff was not prepared on or before the 20th October, 1911, to pro-