

HON. MR. JUSTICE MIDDLETON :—The defendant Lea, who owns a block of some 17 acres of land near Leaside Junction, discussed with Dr. Perry E. Doolittle—his medical attendant—the sale of this land. Dr. Doolittle, having in mind some idea that the property might be advantageously used for a sanitarium, undertook to become Lea's agent for the sale of the property; and at the same time took an option upon the property in his own favour. This dual relationship is evidenced by two documents, dated February 1st; by one of which a ten days' option is given to purchase at \$2,000 per acre, and by the other terms are arranged for the payment of the price "in the event of Dr. P. E. Doolittle disposing of my property." This document further provides: "If Dr. Doolittle succeeds in making the sale of my property I agree to give him a commission of two and a half per cent."

After the expiry of the time limited by this option—on the 12th February, 1912—a new arrangement was made, evidenced by a written memorandum in the words following:—

"In consideration of the sum of one dollar, the receipt of which is hereby acknowledged, I hereby grant to Dr. P. E. Doolittle a thirty days' option to purchase my property at Leaside, consisting of seventeen and three-tenths acres for the sum of \$2,000 per acre, along with the further sum of \$250 to be paid me by him in case this option is not exercised on or before the 22nd inst., and another added sum of \$250 in the further event of this option not being exercised on or before the third day of March. All costs of searching title to be borne by you. Joseph N. Lea."

Contemporaneously another memorandum bearing the same date was signed, giving the terms of payment "in case the option on my property at Leaside is exercised by Dr. Doolittle." These terms called for payment of \$10,000 if the option was exercised within the first ten days of its currency, \$10,250 if exercised within the next ten days, and \$10,500 if during the last ten days. Notwithstanding the argument of counsel, I think this is the meaning of the document. At the same time, the words "on completion of sale only," were added to the earlier document of February 1st, relating to the commission payable, thus shewing that the relationship of principal and agent still continued.

The option of the 13th of February purports to be in consideration of \$1, but no money was actually paid.