

WILLIAM PRICE (INTERVENANT).....APPELLANT;

1903

\*Oct. 13, 14.

\*Nov. 30.

AND

OSCAR WILLIAM ORDWAY (PLAIN- } RESPONDENT.  
TIFF CONTESTING)..... }

CHARLES VEILLEUX (DEFENDANT)...APPELLANT;

AND

OSCAR WILLIAM ORDWAY (PLAIN- } RESPONDENT.  
TIFF)..... }

ON APPEAL FROM THE SUPERIOR COURT, SITTING IN  
REVIEW, AT QUEBEC.

*Contract—Deceit and fraud—Rescission — Evidence—Concurrent findings  
of lower courts—Duty of second court of appeal.*

A sale of timber limits to the plaintiff was effected through a broker for a price stated in the deed to be \$112,500, but the vendor signed an acknowledgment that the true price, so far as he was concerned, was \$75,000. At the time of the execution of the deed a statement was made shewing how the purchase money was to be paid and the vendor signed an agreement that out of the balance of the \$112,500, viz. \$46,502.02, the plaintiff was to get \$37,500, *i.e.*, the amount of the difference between the true price and that mentioned in the deed. The vendor refused to pay over this \$37,500 on the ground that the plaintiff and the broker had conspired together to deceive him as to the actual price to be obtained for the limits, and that the sale was not in fact to the plaintiff for \$75,000 but to the plaintiff's principals, the grantees in the deed, for the full consideration of \$112,500, and that the plaintiff and the broker were acting fraudulently and seeking by deceit and artifice to deprive him of the full price at which the sale had been effected. In an action to recover the \$37,500 from the vendor :—

\*PRESENT :—Sir Elzéar Taschereau C.J. and Sedgewick, Girouard, Davies, Nesbitt and Killam JJ.

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*Held*, affirming the judgments appealed from, that the acknowledgements signed by the vendor settled the rights of the parties unless there was very strong evidence to the contrary and, as there was no such evidence and as the circumstances as found by the courts below, tended to shew that plaintiff was entitled to the money in dispute as the natural result of the transactions between the parties, the case was one in which a second court of appeal would not be justified in disturbing the concurrent findings at the trial and of the court appealed from.

APPEALS by the intervenant and the defendant from the judgments of the Superior Court, sitting in review, at Quebec, affirming the judgments of the Superior Court, District of Quebec, maintaining the plaintiff's action with costs and dismissing the intervention of the appellant, Price, with costs.

The circumstances of the case, in respect to both appeals, are as follows:—The defendant, Veilleux, was the owner of timber limits on the Portneuf river, having an approximate area of three hundred miles. These limits had been purchased at a Government sale by Veilleux, who found difficulty in paying for them, and ultimately borrowed money from a Mr. Amyot for that purpose. Amyot on making the loan took a title to the limits giving Veilleux a right to redeem them within a limited time. This time being about to expire, Veilleux applied to the Hon. L. P. Pelletier to assist him in finding a purchaser for his limits. Mr. Pelletier saw Mr. Price who agreed to advance one-half of \$2,000, the necessary sum to obtain an extension of time from Amyot, if Pelletier would advance the other half, and go into the transaction on joint account. This was agreed to, and on the 1st March, 1902, an agreement was entered into between Veilleux and Price, represented by Pelletier, to the effect that, in consideration of Price advancing \$2,000 to obtain a six months' extension of time for redemption, Veilleux transferred to him all right of property in the limits, and

authorized a sale for not less than \$200,000; and that in the event of sale, after payment of Amyot and all expenses, the balance should be divided between Veilleux and Price. By memorandum at the bottom of the agreement signed by Pelletier and Price, it was stated that Price was acting in the joint interest of himself and Pelletier, who was entitled to one-half of any profit which should be made out of the transaction. The \$2,000 having been paid to Amyot, a subsequent agreement was entered into on 8th May, 1902, by which the People's Bank of Halifax, with the consent of Price, paid Amyot in full and took over the limits to secure the payment as well of \$36,000 paid by the bank to Amyot, as of \$11,660.23 previously due by Veilleux to the bank, also of \$2,100, repaid to Price, and of the sums necessary to be paid to the Crown Lands Department to obtain the transfer of the limits to the bank, and it was agreed that until 1st November, then next, Veilleux might redeem the limits on paying the amount due to the bank, otherwise the limits to remain the property of the bank, and further that Veilleux should deal with the limits only with the written consent of Price.

Veilleux had for a considerable time employed Boulanger, a broker at Quebec, in the effort to dispose of his limits, and had given Boulanger reports, plans, etc., and, in fact, constituted him his agent for the sale giving him his entire confidence. On the 17th May, 1902, Boulanger made an offer to sell at \$75,000, subject to a 5 per cent commission in his favour, which was accepted by Veilleux on 19th May. The acceptance was made after considerable discussion with Boulanger, in which Boulanger represented to both Veilleux and Pelletier that this was the largest sum obtainable, and that asking \$100 more would prevent the transaction being carried through. On the 2nd July, 1902, Veilleux, Boulanger, Ordway, Webster, the

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local manager of the People's Bank of Halifax, and Pelletier, the solicitor for the People's Bank of Halifax, met at the Quebec Bank in Quebec for the purpose of carrying out the transaction and a deed of sale by Veilleux to C. P. Easton & Co., (Ordway's principals,) of the limits in question, prepared by a notary named Sirois, under Ordway's instructions, was submitted and discussed, the price of sale being stated in the deed as \$112,500, distributed as follows: to the People's Bank of Halifax \$51,844.98, to the same bank in payment of advances \$1,200; to Boulanger, for his commission \$3750; to Price, \$9203, and to Veilleux, the balance, \$46,502.02. This deed was not finally executed that day, but was discussed and settled as to its terms and signed, as a draft by all the parties except the Quebec Bank and they then adjourned till next day, Ordway meanwhile obtaining from Veilleux the following acknowledgment: 'Quebec 2nd July, 1902. O. W. Ordway, Esq., Quebec. Dear Sir,—Out of an amount of \$46,502.02, which I will receive from the Quebec Bank for my limits, in virtue of the deed before L. P. Sirois, and signed by me today, it is understood that you get \$37,500 and I keep the balance.'

On the night of 2nd July, Pelletier was informed that the real price was not \$75,000, as represented by Boulanger, but was in fact \$112,500, and that the difference, \$37,500, was to be divided between Ordway, Boulanger and another person. Boulanger had represented that the purchaser desired to state in the deed a price higher than the real price paid, for the purpose of giving an apparently larger value to the limits, and that the \$37,500 difference was for the purpose of acquiring additional limits in the vicinity.

The same parties met again on 3rd July when the deed was signed and the cheques paid to all parties except Veilleux, the amount of money, \$46,502 02,

coming to him, being placed to his credit in the books of the Quebec Bank. He then gave the bank a cheque for \$16,025.81, his indebtedness to it, reducing the balance at his credit to \$30,476.21. Ordway asked Veilleux for a cheque for the \$37,500 mentioned in the memorandum of the previous day, but Veilleux, to whom the above information had been communicated, refused to pay Ordway any sum whatever. Ordway then took the action against Veilleux with an attachment of the moneys in the hands of the Quebec Bank.

The appellant, Price, intervened in the action, alleging his agreement with Veilleux and the transactions which had taken place, claiming \$18,500 as half of the \$37,500 in addition to what he had already received and contesting the plaintiff's claim.

On issues joined upon the merits, the parties went down to trial and, on his appreciation of the evidence, the trial judge maintained the plaintiff's action, declared the attachment binding and dismissed the intervention with costs. Both defendant and intervenant inscribed in review, unsuccessfully, and they now appeal from the judgments of the Court of Review affirming the above mentioned judgments of the Superior Court.

*Stuart K.C.* and *L. P. Pelletier, K.C.* for the appellant, Price.

*L. P. Pelletier K.C.* for the appellant, Veilleux.

*Bédard K.C.* and *Alex. Taschereau K.C.* for the respondent.

The judgment of the court was delivered by :

GIROUARD J.—This appeal involves only questions of fact decided by two courts. There is undoubtedly contradictory evidence, but two courts have found one way, although the reasons given by the judges do

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not all agree. There is some oral evidence in support of the judgment appealed from, but the written evidence is still stronger. The notarial deed of sale of the 3rd July, 1902, which was actually signed by the parties the day previous, fully explains the price paid by C. P. Easton & Co. for the Veilleux timber limits, namely \$112,500, as follows :

To the People's Bank of Halifax, amount advanced.....	\$51,844 98
To the same for transfer bonus .....	1,200 00
To Boulanger for his commission of 5 per cent.....	3,750 00
To Messrs. Price & Pelletier, for their share of the profits on the sale.....	9,203 00
To Veilleux, the balance.....	46,502 02
	\$112,500 00

On the 2nd July, at the same time that the said notarial deed was signed by all the parties interested, the respondent Veilleux, one Boulanger, timber limit broker and jobber, and Mr. Webster, manager of the People's Bank of Halifax, signed a short note addressed to Mr. Price in which they acknowledged

that the purchase price of the Veilleux limits which is put down in the deed to C. P. Easton & Co. as \$112,500 is only \$75,000 *as far as Mr. Veilleux is concerned.*

Previously, on the 17th May, Boulanger wrote Veilleux offering him \$75,000 for his timber limits, which offer he accepted by letter on the 19th May, agreeing further to pay him 5 per cent commission on the amount of the sale. Messrs Price and Pelletier were only interested in this sale.

Fraud has been charged by the appellants against Boulanger and Ordway, but I must confess I fail to see it on the part of any one. Ordway had personal dealings with Boulanger only. The latter was not the agent of Veilleux, although he was to receive a commission from him. On the 13th June, Mr. Pelletier, acting for Veilleux and Mr. Price, signified their con-

sent to accept \$75,000 for the Veilleux limits from Boulanger "or his clients." The latter evidently were not Veilleux and his friends, but Ordway, and ultimately as it turns out C. P. Easton & Co., lumber merchants of Albany, who paid the money and got the title. It was only at that time that Ordway and Easton & Co. appeared on the scene. Boulanger told Veilleux and Pelletier that he could not get more than \$75,000. That was perfectly true. Easton was unknown to them and of course Ordway wished to make his little pile and keep the name of the real purchasers a secret. I do not see anything fraudulent or wrong about this.

But even if all the transactions were not open and strictly honest, Mr. Pelletier became aware of their nature on the evening of the 2nd July before the said deed was signed by the notary and the purchase money distributed; he admits it in his evidence, and notwithstanding this knowledge he allowed that distribution to take place in the presence of all parties in accordance with the stipulations of said deed, without any protest or objection on his part. The appellants, who were represented by Mr. Pelletier, are therefore estopped from alleging fraud. There was full *acquiescement*.

I cannot understand that Mr. Pelletier did not know the full nature of the transactions, when the deed was signed by the parties on the 2nd July. On reading the following document which was prepared by him and signed by Veilleux immediately after, one would suppose that he knew or at least should have known the nature of the transactions.

QUEBEC, 2nd July, 1902.

O. W. ORDWAY, Esq., Quebec.

DEAR SIR,—Out of the amount of \$46,502.02 which I will receive from the Quebec Bank for my limits in virtue of deed before L. P. Sirois, and signed by me to-day, it is understood that you get \$37,500 and I keep the balance.

CHARLES VEILLEUX.

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The deed shews that this amount of \$46,502 was the balance remaining as profits to be divided between Veilleux and Ordway, all other claims having been settled, especially the claim of Mr. Price which was to be divided between himself and Mr. Pelletier. It was always understood that Mr. Veilleux would get about an equal share of the profits and that is the reason why he, as depositor of the money in the bank, promised to pay to the respondent \$37,500, he keeping \$9,203 for his share of the profits.

The acknowledgment of Veilleux settles the rights of the parties and very strong evidence would be required to set it aside. Not only is there no such evidence, but all the circumstances of the case tend to shew that it was the natural result of the dealings and transactions between the parties. It is therefore one of those cases, in my opinion, where a second court of appeal would not be justified in disturbing the findings of facts of the trial judge who had an opportunity of seeing the witnesses, approved as they were in very clear language by the judges in review. The appeals both of Veilleux and Price should therefore be dismissed with costs.

*Appeals dismissed with costs.*

Solicitors for the appellant Price: *Caron, Pentland,  
 Stuart & Brodie.*

Solicitors for the appellant Veilleux: *Drouin, Pelle-  
 tier & Baillargeon.*

Solicitors for the respondent: *Fitzpatrick, Parent,  
 Taschereau, Roy & Caron.*

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