

1918

*Feb. 27.

*Mar. 5.

BERG v. CARR.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
COLUMBIA.*Contract—Breach of—Performance—Impossibility.*

APPEAL from the judgment of the Court of Appeal for British Columbia (1), affirming the judgment of the trial judge, Morrison J. (2), and maintaining the respondent's (plaintiff's) action.

The appellant was general manager of the Hudson Bay Insurance Co. with head office in Vancouver. The respondent was the company's general agent in Alberta, where he wrote up "hail" insurance policies. The premiums on these policies were paid partly in cash and partly by notes. Another firm, Anderson & Sheppard Co., entered into an option with appellant to sell him \$50,000 worth of notes at a discount. Later on the appellant asked the respondent to resign; and as an inducement he offered to take up the above option and hand over the notes to respondent for collection at half the profit he was to obtain. The respondent accepted the offer and resigned. But only \$10,000 odd of unpaid notes were in the hands of Anderson & Sheppard Co. on the date of their delivery. The respondent brought action for the amount he would have received in profits if the agreement had been carried out, or in the alternative, damages for breach of contract.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Anglin and Brodeur JJ.

(1) 24 B.C. Rep. 422; 38 D.L.R.
176; [1917] 3 W.W.R. 1037.

(2) [1917] 2 W.W.R. 94.

The trial judge found in favour of the respondent for \$5,500 damages; and the Court of Appeal affirmed this judgment, McPhillips J.A. dissenting in part.

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On an appeal by the defendant to the Supreme Court of Canada, the court, after hearing counsel for both parties, reserved judgment, and, at a subsequent date, dismissed the appeal with costs.

Appeal dismissed with costs.

H. S. Wood for the appellant.

Lafleur K.C. and *Charman* for the respondent.
