PITHER & LEISER (PLAINTIFFS).....APPELLANTS; 1902

AND *Oct. 27, 28.

JOHN A. MANLEY (DEFENDANT).....RESPONDENT. *Nov. 17.

ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA.

Debtor and creditor — Payment — Accord and satisfaction — Mistake — Principal and agent.

On being pressed for payment of the amount of a promissory note, the defendant offered to convey to the plaintiffs a lot of land, then shown to the plaintiffs' agent, in satisfaction of the debt. The agent, after inspecting the land, made a report to the plaintiffs but gave an erroneous description of the property to be conveyed. On being instructed by the plaintiffs to obtain the conveyance, the plaintiffs' solicitor observed the mistake in the description and took the conveyance of the lot which had actually been pointed out and inspected at the time the offer was made. More than a year afterwards, the plaintiffs sued the defendant on the note and he pleaded accord and satisfaction by conveyance of the land. In their reply the plaintiffs alleged that the property conveyed was not that which had been accepted by them and, at the trial, the plaintiff recovered judgment. The full court reversed the trial court judgment and dismissed the action.

Held, affirming the judgment appealed from (9 B. C. Rep. 257) that the plaintiffs were bound to accept the lot which had been offered to and inspected by their agent in satisfaction of the debt and could not recover on the promissory note.

*PRESENT:—Taschereau, Sedgewick, Girouard, Davies and Mills JJ.

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APPEAL from the judgment of the Supreme Court of British Columbia, *in banc* (1), reversing the trial court judgment and dismissing the plaintiffs' action with costs.

The facts and questions at issue on this appeal are stated in the above head note and in the judgments reported.

Davis K.C. for the appellants.

Duff K.C. for the respondent,

TASCHEREAU J.—Action by appellants on a promissory note for $985. Plea that the appellants' claim had been paid and satisfied by the price of a certain lot of land, known as lot 2, in block 12, situate at Grand Forks, B.C., conveyed to them by the respondent and which they agreed to take in full satisfaction of the said promissory note. Reply that the lot of land which the appellants agreed to take in satisfaction of their claim was not lot 2, in block 12, but lot 2, in block 1.

At the trial judgment was given against the respondent. But that judgment was reversed by the full court (1) and the action was dismissed, the court holding that it was lot 2, block 12, as contended for by the respondent, that the appellants had agreed to take in satisfaction of their claim. The appellants have failed to convince me that there is error in that judgment of the full court.

The controversy between the parties is entirely upon a question of fact, of identity of the lot agreed upon, for the appellants conceded at bar that they, by their agent, had agreed to take from the respondent a certain lot of land in full payment. Their agent and the respondent had been upon the lot itself, lot 2,

(1) 9 B. C. Rep. 257.

in block 12, and that lot pointed out by the respondent was undoubtedly in the minds of both of them the lot to be conveyed to appellants. The agent wrote to appellants that a lot he had looked over when in Grand Forks was offered to them by respondent, but unfortunately he erroneously described the lot as lot 2, in block 1, instead of lot 2, in block 12, and appellants accordingly instructed their solicitor at Grand Forks to procure a conveyance from respondent of lot 2, in block 1, meaning however no other lot but the one that had been pointed out to their agent by respondent. Now, the solicitor, upon ascertaining, on the ground, that the description given to him by the appellants was an erroneous one, and that it was really lot 2, in block 12, and not at all lot 2, in block 1, that they meant to take from the respondent in satisfaction of their claim, drew up a conveyance of lot 2, in block 12, which, being executed by respondent, he duly registered, notice of which was without delay given to appellants by their agent.

More than a year afterwards, the appellants instituted this action for the amount of the promissory note. Their action was rightly dismissed. They got the lot that was offered to them and accepted by them, the lot that had been shown to their agent by the respondent.

Appeal dismissed with costs.

SEDGEWICK J. concurred in the judgment dismissing the appeal for the reasons stated by His Lordship Mr. Justice Taschereau.

GIROUARD J.—I have some doubts in this case, which involves merely questions of fact found differently by two courts. Both parties agreed on the ground as to a lot of land to be conveyed. They identified that lot to the lawyer charged with the prepara-

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tion of the deed, and understood then that it was lot 2 in block 1. Subsequently the lawyer ascertained that the lot shown to him was lot No. 2, in block 12. The latter has 275 feet in depth by 50, and lot No. 2, in block 1, has only 125 by 50. The evidence is clear that the lot to be conveyed was at least 250 feet deep. True, the correspondence between the purchasers and their agent points to lot No. 2, in block 1, because the agent understood from the vendor that that was the correct number. The lawyer explains that this was a mistake and prepared the deed of conveyance accordingly. There is certainly some evidence in support of that view which was sanctioned by the judgment appealed from. The appeal should be dismissed with costs.

DAVIES and MILLS JJ. concurred in the judgment dismissing the appeal for the reasons stated by His Lordship Mr. Justice Taschereau.

Appeal dismissed with costs.

Solicitors for the appellant: *Higgins & Elliott.*

Solicitors for the respondent: *Cayley & Cochrane.*