

HENRY GIEGERICH (PLAINTIFF)APPELLANT ;

1904

*Oct. 26, 26.

*Nov. 21.

AND

JULES JUSTIN FLEUTOT (DEFEND- }
ANT) } RESPONDENT.ON APPEAL FROM THE SUPREME COURT OF BRITISH
COLUMBIA.*Title to land—Champerty.*

In *Briggs v. Newswander* (32 Can. S. C. R. 405), the plaintiff was held entitled to a conveyance from defendants of a quarter interest in certain mineral claims. In that action *Newswander et al.* were only nominal defendants, the real interest in the claims being in F. After the judgment was given plaintiff conveyed nine-tenths of his interest to G., the expressed consideration being moneys advanced and an undertaking by G. to pay the costs of that action and another brought by Briggs, and by a subsequent deed, which recited the proceedings in the action and the deed of the nine-tenths, he conveyed to G. the remaining one-tenth of his interest, the consideration of that deed being \$500 payable by instalments. Briggs afterwards assigned the above-mentioned judgment and his interest in the claims to F. In an action by G. against F. for a declaration that he was entitled to the quarter interest.

Held, affirming the judgment appealed from (10 B. C. Rep 309) that the transfer to G. of the nine-tenths was champertous and the court would not interfere to assist one claiming under a title so acquired.

Held, also, that the transfer of one-tenth was valid, being for good consideration and severable from the remainder of the interest.

APPEAL and CROSS-APPEAL from a decision of the Supreme Court of British Columbia (1) reversing the judgment at the trial in favour of the plaintiff except as to one-tenth of the property claimed.

The facts will be found sufficiently stated in the above head-note.

*PRESENT :—Sedgewick, Girouard, Davies, Nesbitt and Killam JJ.

1904
 GIEGERICH
 v.
 FLEUTOT.

S. S. Taylor K.C. for the appellant. The conveyance of the nine-tenths was not champertous, it being for the valuable consideration of money lent and advanced as well as the undertaking to pay costs. See *Fischer v. Kamala* (1) at page 187. If it was, a stranger to the deed could not take advantage of it. *Knight v. Bowyer* (2) at page 444.

On the cross-appeal the plaintiff contends that there is no connection between the assignment of the one-tenth interest remaining in Briggs and the prior agreements or arrangements. Consequently the cross-appeal should not succeed.

R. M. Macdonald for the respondent. The appellant can only succeed by relying on an illegal conveyance which he will not be permitted to do. *Hilton v. Woods* (3).

On the cross-appeal we should have relief against the decision of the court below as Fleutot is estopped from asserting any prior equity by reason of his standing by and not disclosing his rights during the litigation of the case of *Briggs v. Newswander* (4).

The judgment of the court was delivered by :

KILLAM J.—We are all of opinion that these appeals should be dismissed with costs.

The original transfer from Briggs to Giegerich of nine-tenths of Briggs' interest was clearly champertous. Admittedly, it was in pursuance of an arrangement by which Giegerich was to maintain the suit against Newswander, Doras and Darignac for a share of the property to be recovered.

Newswander had a right of action against Giegerich for maintenance. The transaction was wrongful towards him. The present action was brought to

(1) 8 Moo. Ind. App. 170.

(3) L. R. 4 Eq. 432.

(2) 2 DeG. & J. 421.

(4) 8 B. C. Rep. 402; 32 Can. S. C. R. 405.

enforce, as against Fleutot, the judgment in the suit against Newswander *et al.* (1). Whether Fleutot should be held barred by the judgment as an assignee of Newswander *pendente lite* or as having a prior interest represented by Newswander, Giegerich cannot be in a better position to enforce the judgment against him than against Newswander himself.

In our opinion a court of equity should not interfere against either Newswander or Fleutot at the instance of one claiming under a title so acquired. See *Burke v. Greene* (2); *Prosser v. Edmonds* (3); *Harrington v. Long* (4); *Hilton v. Woods* (5); *Re Cannon* (6); *Peck v. Heurich* (7).

Giegerich alone appeals. Briggs has repudiated the transactions with him by conveying to Fleutot. In so far as they were illegal and wrongful towards Newswander Giegerich cannot insist on the right to use Briggs's name to enforce the former judgment.

We agree with the court below, also, in considering the transfer of the remaining one-tenth interest as good. It was severable and upon good consideration. The fact that the consideration was expressed to be in part for a confirmation of the former illegal transfer could not invalidate the legal part of the transaction. See *Pigot's Case* (8); *Bank of Australasia v. Breillat* (9); *Pickering v. The Ilfracombe Railway Co.* (10).

Appeal and cross-appeal dismissed with costs.

Solicitors for the appellant: *Taylor & O'Shea.*

Solicitor for the respondent: *R. M. Macdonald.*

(1) 8 B. C. Rep. 402; 32 Can. S. C. R. 405. (5) L. R. 4 Eq. 432.
 (2) 2 Ball & B. 517. (6) 13 O. R. 70; Cout. Dig. 234.
 (3) 1 Y. & C. Ex. 481. (7) 167 U. S. R. 624.
 (4) 2 Mylne & K. 590. (8) 11 Co. 26 b.
 (9) 6 Moo. P. C. 152.
 (10) L. R. 3 C. P. 235.