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JAMES H. BROWNLEE (PLAINTIFF) . . APPELLANT;

AND

\*Oct. 28, 29.

\*Nov. 3.

HARRY MCINTOSH (DEFENDANT) . . . RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

*Crown lands—Location—Public policy—Evasion of statute—B.C. "Land Act," 8 Edw. VII. c. 30, ss. 34, 36—Sale of Crown lands—Principal and agent—Commission on sales—Quantum meruit—Tainted contract.*

B., who had laid out and inspected Crown lands as a Government surveyor, furnished information to the defendant and an associate which enabled them to secure choice locations, comprising over 7,000 acres of these lands, in the names of a number of persons nominated by them and employed as "stakers." Subsequently B. assisted in the disposal of the lands thus secured to innocent purchasers under an arrangement with the defendant and his associate that he was to participate in any profits which should be obtained on such sales. In an action by B. to recover compensation for the services he had rendered in regard to these sales:—

*Held*, that the circumstances disclosed a scheme concocted in opposition to the policy of the British Columbia "Land Act" and in violation of its provisions respecting the disposal of Crown lands; consequently, the agreement, being tainted with the character of the scheme, ought not to be enforced by the courts.

*Per* Idington and Anglin JJ.—The plaintiff's claim fails for want of evidence of any request by the defendant that he should render the services in respect of which remuneration is claimed nor an agreement to remunerate him for assistance in effecting the sales in question.

The judgment appealed from (3 West. W.R. 725; 23 West. L.R. 30; 9 D.L.R. 400) stood affirmed.

**APPEAL** from the judgment of the Court of Appeal for British Columbia (1), reversing the judgment of

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

(1) 3 West. W.R. 725; 23 West. L.R. 30; 9 D.L.R. 400.

Grant Co. J., at the trial, and dismissing the plaintiff's action with costs.

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The circumstances of the case which are material to this report are stated in the head-note.

*S. S. Taylor K.C.* for the appellant.

*W. B. A. Ritchie K.C.* for the respondent.

THE CHIEF JUSTICE concurred with Duff J.

DAVIES J.—I would dismiss this appeal with costs.

IDINGTON J.—I cannot find any contract ever was made between the appellant and respondent entitling the former to make the claims he sets up.

If the dealings had between the parties, are kept in view, there is nothing in the expressions respondent is alleged to have used that can properly be twisted into a foundation for such a claim for commission as the learned trial judge allowed.

And if under the circumstances I had felt appellant entitled to some compensation for such time as he gave to Mr. Coote, I would say he had been amply compensated by what Mr. Garnham has already paid him, and is not entitled to levy on the co-adventurers a duplicate thereof, even if they are not partners.

The appeal should be dismissed with costs.

DUFF J.—I do not think it is necessary to consider whether the Court of Appeal was justified in reversing the finding of the learned County Court judge on the facts; I have come to the conclusion that the action ought to be dismissed upon another ground.

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The plaintiff bases his claim upon a contract which he alleges he entered into with the defendant and his associate Garnham in the Spring of 1911, by which they agreed that if the plaintiff would assist them in selling certain lands in respect of which they then had a contract of purchase with the British Columbia Government they would remunerate him. The land in question comprises about 7,000 acres in the northern part of British Columbia. These lands had been surveyed by the plaintiff under contract with the Government. In the preceding Autumn the plaintiff, acting for the defendant and his associate, had applied for the purchase of the lands in the names of different persons — there were ten or twelve parcels in all — nominated by them; and the applications having been accepted he had procured the execution of conveyances by the applicants to the defendant McIntosh in trust for Garnham and McIntosh. For this the appellant was paid 25 cents an acre. Later, in the Spring of 1911, according to the plaintiff's story, McIntosh and Garnham made the further arrangement already mentioned upon which the action was brought.

It is perfectly obvious that the scheme entered upon and successfully carried out by McIntosh and Garnham, through the agency of the plaintiff, was a fraud upon the "Land Act." The conditions upon which surveyed public lands might be purchased, in 1910, were those laid down in sections 34 and 36 of the "Land Act" of 1908; and one of those conditions is expressed in sub-section 11 of section 34, in the following words:—

34.—(11) No person who has given notice that he has applied for permission to purchase lands under the provisions of this section

shall be entitled to give notice of his intention to apply for permission to purchase any other lands under the provisions of this section until after he shall have either abandoned his application for permission to purchase or acquired a Crown grant of the lands for which he had previously given notice of his intention to apply for permission to purchase, and shall have obtained a certificate from the Commissioner that he has improved the said land to the extent of three dollars per acre; land which is *bonâ fide* cultivated shall be deemed to be improved land, and in other respects section 22 of this Act shall apply: Provided always, that no person shall purchase more than one tract of land, of whatever extent, under this section, until the above-mentioned improvements have been completed in accordance with the provisions of this Act.

McIntosh, Garnham and the plaintiff would not, of course, be entitled to purchase, under the provisions of this section, more than three separate tracts of land without having complied with the conditions as to improvements. The plan adopted to evade these provisions was to make a number of applications in the names of the nominees of McIntosh and Garnham. There can be no question that the real applicants were McIntosh and Garnham. The scheme was to obtain Crown grants of these lands in violation of the provisions of the statute, although in professed compliance with them, and then sell the lands to purchasers, who, in the ordinary course, would know nothing of the contrivance that had been resorted to. Any agreement entered into for the purpose of carrying out or facilitating the carrying out of this fraud upon the "Land Act" would be an agreement which it would be the duty of the courts to refuse to enforce as soon as the character of it should become apparent. The contract set up by the plaintiff under which he agreed to assist in the sale of the lands is necessarily tainted by the character of the scheme as a whole. It follows that the action ought to be dismissed. For these reasons I concur in dismissing the appeal with costs.

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ANGLIN J.—The purchaser who bought the property, on the sale of which the plaintiff claims a commission, was introduced to the defendant and his partner by one Jones, an agent employed by them, to whom they paid the ordinary commission on the sale.

I fail to find in the record any evidence that the defendant ever agreed with the plaintiff to pay him for assisting in the sale of this property a commission or a remuneration in addition to the 25 cents an acre paid him for procuring the property for the defendant and his partner and furnishing them with reports and information concerning it. Neither do I find evidence of any request from the defendant and his partner, or either of them, that the plaintiff should render the services in respect of which he sues from which, in the circumstances of this case, a promise to pay him for those services should be inferred as a matter of law.

The appeal, in my opinion, fails and should be dismissed with costs.

BRODEUR J. concurred with Duff J.

*Appeal dismissed with costs.*

Solicitors for the appellant: *Taylor, Harvey, Grant,  
 Stockton & Smith.*

Solicitors for the respondent: *St. John & Jackson.*