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MACLEOD v. THE SAWYER & MASSEY CO.

*May 4, 6.

*June 15.

ON APPEAL FROM THE SUPREME COURT OF SASKATCHEWAN.

Vendor and purchaser—Sale of land—Condition—Approval of assignments—Equitable estate or interest—Priority between transferees—Principal and agent—Fraudulent and criminal practices—Notice of previous transfer—Implied knowledge of principal.

APPEAL from the judgment of the Supreme Court of Saskatchewan, *in banco*(1), reversing the judgment of Wetmore C.J., at the trial, and maintaining the respondents' (plaintiffs') action with costs.

One Bennett purchased lands from the Canadian Pacific Railway Co., on deferred payments, and received a contract from the company agreeing to convey the lands to him, on completion of the payments, with a proviso that no assignment of his interest should be effectual unless approved by the company. B. transferred the land in fee to the Sawyer & Massey Co., which applied to the railway company for the approval of the transfer, and the approval was refused on account of the conveyance not being of B.'s equitable interest only. J. D. McLeod, having knowledge of the transaction between B. and the S. & M. Co., subsequently procured an assignment of the same lands from B. to M. J. M., in proper form and, by fraudulent artifices and criminal acts, secured the approval thereto of the railway company. An action by the S. & M. Co. against all the other parties to set aside the conveyance to M. J. M. was dis-

*PRESENT:—Girouard, Davies, Idington, Duff and Anglin JJ.

(1) 2 Sask. L.R. 516, *sub nom. Sawyer & Massey Co. v. Bennett*.

missed at the trial, by Chief Justice Wetmore. By the judgment appealed from the Supreme Court of Saskatchewan reversed this decision, Lamont J. dissenting, and held that the clause in the agreement requiring the approval of the railway company affected only the position between the vendor and the purchaser, B., that the assignments by B., without such approval, created equitable estates or interests in the land in his assignees, which would result equally from a conveyance in fee; consequently, that the equities, as between the S. & M. Co. and M. J. M., being equal the approval of the railway company gave M. J. M. the better equitable estate. However, all the circumstances being taken into consideration, the approval fraudulently obtained could not give M. J. M. any better position in equity than if it had never been obtained; therefore, the S. & M. Co.'s equitable estate being first in point of time should prevail, and they had the right to question the means by which such approval was obtained and to shew that it was improperly obtained.

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On appeal to the Supreme Court of Canada, after hearing counsel on behalf of both parties, the court reserved judgment and, on a subsequent day, dismissed the appeal with costs, Duff and Anglin JJ. dissenting.

Appeal dismissed with costs.

Chrysler K.C. and *W. B. Willoughby* for the appellant.

Norman MacKenzie for the respondents.