

A mining company which purchases the assets of an old company whose debts and liabilities it agrees to pay and satisfy is not liable to a stranger to the contract for a tort committed by the old company.

Galt, for appellants. *Davis*, K.C., and *Hamilton*, for respondents.

Province of New Brunswick.

SUPREME COURT.

Barker, J.] LEIGHTON v. HALE. [Oct. 18, 1904.

Partnership—Purchase of property—Re-sale at profit—Agreement for division of profits—Consideration—Declaration of trust.

Upon information supplied by the plaintiff, the defendant purchased certain property which upon re-sale yielded a surplus after meeting a liability the defendant had assumed for the benefit of plaintiff's father. The defendant promised the plaintiff that in the event of there being a surplus it should belong to him:

Held, that the plaintiff and defendant were not partners, entitling the plaintiff to share in the profits from the re-sale of the property, and that the defendant's promise, which was not a declaration of trust, was nudum pactum.

Carvell, for plaintiff. *Hartley*, for defendant.

Barker, J.] WINSLOWE v. MCKAY. [Dec. 20, 1904.

Deed—Incapacity of grantor—Absence of consideration—Conflict of evidence—Belief.

Where at the time of the execution of a deed of conveyance the grantor was 70 years of age, was sick and in feeble health, and it was the opinion of some witnesses, though not of others, that he did not understand the nature of his act; and the effect of the deed was to deprive him of means of support, and the evidence was uncertain respecting the existence of adequate consideration for the deed and favoured the view that it was intended as a gift, the deed was set aside.

W. A. Trueman, for plaintiff. *Dixon*, K.C., for defendants.