

the whole purchase money must be paid to the trust company.

*Marsh, Q.C.*, and *Roaf* for the appellants.

*McPherson* and *Clarke* for the respondents.

February 20, 1894.

CLARKE v. HAGAR.

Ontario.]

*Contract—Illegal or immoral consideration—Transfer of property—Intention of transferor—Knowledge of intended use—Pleading.*

H. sold a house to a person who had occupied it as a house of ill-fame, taking a mortgage for part of the purchase money. The equity of redemption was assigned to C., and to an action of foreclosure C. set up the defence that the price paid for the house was in excess of its value, and a part of it was for the good will of the premises as a brothel. On the trial it was found as a fact that H., when selling, knew the character of the buyer and the kind of place she had been keeping, but that the house was not sold for the purpose of being used as a place of prostitution. Judgment was given against C. in all the Courts below.

*Held*, affirming the decision of the Court of Appeal, *Taschereau, J.*, dissenting, that the particular facts relied on as constituting the illegal or the immoral consideration should have been set out in the statement of defence; that if the house had been sold by H. with the intention that it should be used for an immoral or illegal purpose, the contract of sale would have been void and incapable of being enforced, but mere knowledge by C. of the buyer's intention so to use it would not avoid the contract.

Appeal dismissed with costs.

*R. Clarke*, appellant, in person.

*Armour, Q.C.*, for the respondent.

February 20, 1894.

FARWELL v. THE QUEEN.

Exchequer.]

*Information of intrusion—Subsequent action—Res Judicata—Jurisdiction of the Exchequer Court—B.N.A. Act, Sec. 101.*

In a former action by information of intrusion to recover possession of land in British Columbia, the title to such land was directly in issue and determined (See 14 Can. S.C.R. 392).