

RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

A. G. Slaght, for defendant McDougall, appellant.

E. D. Armour, K.C., for plaintiff Galbraith, respondent.

HON. MR. JUSTICE CLUTE:—The defendant, being the owner of a lot in the district of Algoma, entered into an agreement with the plaintiff at the city of Montreal, on the 11th of February, 1911, whereby the defendant agreed to transfer and make over to the plaintiff a one-fourth interest, in a certain 160 acres in lot 12, 2nd concession of Whitney, district of Algoma, conditional upon the station being located on said site.

The agreement provides that Galbraith, the plaintiff, "is to provide the funds for surveying and laying out the property in town lots, and other incidental expenses preparatory to offering said property for sale. Said expenses are to be equally shared by each, when the property is disposed of, or when a sufficient sum is realized."

It clearly appears, from the evidence of both parties, that the intention was that this agreement, which was not under seal, should be superseded by a more formal one to be prepared by a solicitor at Montreal. This was not done, but a formal agreement was prepared after the parties had visited the premises, and it is quite clear, from the evidence, that the intention of the parties was that this latter document, bearing date the 28th March, 1911, prepared by a solicitor, should present the final agreement between the parties.

It recites that McDougall (the defendant) is the owner of the lot, that he "intends laying out the whole, or a portion of the said lot as a town site, and to dispose of the lots thereon by private sale or otherwise," that it is necessary to survey the land, open the streets, and in other respects improve the land for the purpose of a townsite, "And whereas the party of the second part has agreed to advance and pay one-half of the total cost of all necessary expenses in connection with the laying out, improvement and development of the said townsite, together with the survey, plan and advertisement of the same in consideration of an undivided one-quarter interest or share in the proceeds of the sale or disposition in the said lots, mining rights or otherwise."