

reason I think Hunt is in a different position from Dresskell and in the same boat with Roberts. He was not a mere stranger to the property, and was more than a mere agent or quasi-trustee. He was possessed of the legal title, and had the legal power and control over it, which he was exercising, no doubt, at the instance of Roberts, the beneficial mortgagee; but I cannot see how this relieved him from the duty of selling in a provident manner, having regard to the interests of mortgagor and mortgagee. Moreover, it appears from the evidence of the defendant Hunt himself that he knew that these proceedings were being taken in order to enable Roberts to acquire the title to the property and so to sell to the syndicate. There was no idea or intention of selling it at the highest and best price obtainable so as to pay off the mortgage and procure something over it for the mortgagor. Lord Selborne's judgment in *Barnes v. Addy*, L. R. 9 Ch. 244, may be referred to.

I think the evidence does not warrant us in interfering with the learned trial Judge's finding as to the value of the property.

The 3rd and 4th paragraphs of the judgment below must be varied in accordance with this opinion. In other respects the judgment is affirmed without costs of appeal to either party.

SEPTEMBER 19TH, 1902.

C. A.

BURTON v. PLAYFAIR.

Specific Performance—Contract for Sale of Timber Limits—Correspondence—Completed Contract—Statute of Frauds—Misunderstanding—Title—Judgment—Reference.

An appeal by defendant from judgment of *BOYD, C.*, directing specific performance of a contract by defendant to purchase from plaintiffs, for \$45,000, certain timber berths in the townships of Lount, Mills, and Pringle, in the district of Parry Sound.

A. B. Aylesworth, K.C., and W. Steers, Midland, for appellant.

W. Cassels, K.C., C. E. Hewson, K.C., and A. E. H. Creswicke, Barrie, for plaintiffs.