

the negotiator dealt with in the case referred to of Coleridge at the suit of Bell?

3. If, as I think the circumstances and evidence strongly point, the plaintiff had in fact no option, nothing in fact to transfer to the defendant, if he was simply the agent of the vendors, vitally interested in earning his \$1,000 commission, can he by concealment and misrepresentation earn a commission from the vendee as well? I cannot see my way to sanction such a result.

4. And if he had no option, nothing in fact to give to the defendant, though it might be different upon distinct evidence that he had laboured long and earnestly to effect a sale, what consideration is there to support the defendant's promise of division of profits? I can find none. The issue of the cheque and execution of the undertaking were both before discovery of the secret commission, or misrepresentation of the terms of sale, had been discovered and ought not to be made to assist the plaintiff now.

There will be judgment, dismissing the action with costs.

HON. MR. JUSTICE LENNOX,

JUNE 16TH, 1914.

ALLAN v. PETRIMOULX & CARNOOT.

6 O. W. N. 593.

Vendor and Purchaser—Agreement for Sale of Land—Assignment by Purchaser to Sub-purchaser—Rights of Sub-purchaser—Dispute as to Whether Water Lot Included in Agreement—Construction of Agreement—Estoppel—Evidence—Notice to Sub-purchaser of Terms of Bargain—Acceptance of Payments by Vendor—Specific Performance—Costs.

Defendant agreed to sell his farm, bordering on the Detroit River, to C., who assigned his contract to A. The conveyancer, in reducing their agreement to writing, erroneously inserted words including the water lot in front of said farm, when, in fact, the defendant did not bargain to give, and C. did not bargain to get, the said water lot. Before the assignment to him, A. was fully informed of the purport of the verbal bargain and of the circumstances attending the execution of the written agreement. Action by the executors of A. for specific performance.

LENNOX, J., *held*, that the plaintiffs could not succeed, since A. was in no better position than C., the assignor.

Held, that defendant's rights were not prejudiced by the acceptance of payments.

A. R. Bartlett, for plaintiffs.

F. D. Davis, for defendants.