

Borden, Q. C., for the appellants.

Newcombe, Q. C., & Drysdale for the respondent.

9 December, 1895.

LOWENBERG & Co. v. WOLLEY.

British Columbia.]

Principal and agent—Negligence of agent—Financial brokers—Lending money for principal—Liability for loss—Measure of damages.

W. having money to invest, consulted a member of the firm of L. & Co., brokers and real estate agents, who informed him that he had a first class gilt-edged investment, and W. gave him \$5,500, authorising him to lend it on the security mentioned, and as it was represented by the broker. The security was a mortgage on land, and the broker personally knew neither the borrower nor the property, but acted on the certificate of two friends of the borrower, neither of whom had experience in valuing real estate, which represented the land to be worth \$7,000. No interest was ever paid on the mortgage, and on attempting to realize on the security it was found that the land was not worth more than half of the amount loaned. W. then brought an action against L. & Co. for the amount of the loan, claiming that they were guilty of negligence in the transaction.

Held, affirming the decision of the Supreme Court of British Columbia, that the evidence established that L. & Co. were agents of W. in the matter of the loan, as they professed to act for him and in his interest, and it made no difference that they were remunerated by the borrower and not by W. their principal; and it was also proved that L. & Co. were guilty of gross negligence and liable to make good the loss sustained by W. in consequence thereof.

Held, also, reversing the decision appealed from, Taschereau and Gwynne, JJ., dissenting, that W. was not entitled to recover back the whole sum advanced to the brokers with interest at the rate in the mortgage, as held by the Court below, but could only recover the loss occasioned by the over valuation adopted and acted on by the brokers.

Held, per Gwynne, J., that W. was entitled to the sum advanced, but with interest at 6 per cent only.

Appeal dismissed and judgment varied without costs.

Robinson, Q. C., for the appellants.

Moss, Q. C., for the respondent.