

BOYD, C.

DECEMBER 12TH, 1903.

TRIAL.

LUNDY v. GARDNER.

Principal and Agent—Purchase of Land by Agent—Proof that Purchase Made for Principal—Parol Evidence—Statute of Frauds.

Action to compel the defendants to convey to plaintiff certain land alleged to have been purchased by the defendant for the plaintiff. The defendant pleaded the Statute of Frauds.

BOYD, C., held that the evidence proved that the land was bought by defendant as agent for plaintiff, and that plaintiff continued in possession and improved the land on the faith of that engagement with defendant. He paid interest on the purchase money and obtained receipts. It is competent to prove the agency and purchase for another by parol evidence, notwithstanding the Statute of Frauds. *Bartlett v. Pickersgill*, 1 Cox 15, has been overruled. See *McMillan v. Barton*, 19 A. R. 602; *Barton v. McMillan*, 20 S. C. R. 404; *James v. Smith*, [1891] 1 Ch. 384, 65 L. T. 544; *Re Duke of Marlborough*, [1892] 2 Ch. 133; *Rochefoucauld v. Boudent*, [1897] 1 Ch. 196.

Judgment for plaintiff for a conveyance, on paying the price agreed on and all interest, from which may be deducted plaintiff's costs of this action if he desires.

MACLENNAN, J.A.

DECEMBER 12TH, 1903.

C.A.—CHAMBERS.

RE NORTH PERTH PROVINCIAL ELECTION.

MONTEITH v. BROWN.

Parliamentary Elections—Controverted Election Petition—Motion to Dismiss for Want of Prosecution—Pending Motion to Extend Time for Trial—Refusal of Petitioner to Submit to Examination—Contempt of Court.

Motions by respondent to dismiss the petition for want of prosecution and to commit the petitioner for contempt for refusing to be sworn or examined in support of the first motion, or to compel him to attend for examination at his own expense.

J. P. Mabee, K.C., for respondent.

J. Baird and E. B. Ryckman, for petitioner.