

the extent of \$100, and could have been sold for \$1,300; that the plaintiffs did not communicate to the defendant any information as to the increase, nor offer to sell the land for him at the advanced price; that the defendant did not employ the plaintiffs to sell the land; that the defendant had paid no more than the \$400; and that the defendant had not tendered to the plaintiffs a reconveyance.

The Alberta judgment, the learned Judge said, was not binding upon the defendant in Ontario, and the action was maintainable here. The foreign judgment was not a merger of the original cause of action; the plaintiff might sue either upon the original cause of action or upon the judgment: *Trevelyan v. Meyers* (1895), 26 O.R. 430; *Bugbee v. Clergue* (1900), 27 A.R. 96; S.C., sub nom. *Clergue v. Humphrey* (1900), 31 S.C.R. 66.

The clause of the agreement above-quoted should be construed to mean that the lot would increase or advance in value within a year to such an extent that, if the defendant saw fit to sell, he could realise the profit mentioned. The plaintiffs did not agree to apprise the purchaser of an increase. The plaintiffs' covenant was satisfied by the fact of the increase.

Judgment for the plaintiffs for the balance due on the contract, with interest and costs.

SUTHERLAND, J.

APRIL 27TH, 1916.

*DODDS v. HARPER.

Land Titles Act—Assignment of Charge—"Subject to the State of Account"—R.S.O. 1914 ch. 126, sec. 54(4)—Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109, secs. 2, 7—Charge Executed in Blank—Moneys Advanced by Assignee Misappropriated by Agent of Chargee—Right of Assignee to Enforce Charge—Authority to Receive Moneys Advanced—Fraud—Mortgage—Foreclosure.

An action by a second mortgagee to enforce by foreclosure a mortgage or charge made by the defendant upon land which had been bought under the Land Titles Act.

The action was tried without a jury at Toronto.

J. E. Jones and V. H. Hattin, for the plaintiff.

S. H. Bradford, K.C., for the defendant.

SUTHERLAND, J., set out the facts in a written opinion. There was a prior mortgage or charge upon the land; and the defendant