

AGENTS' RIGHTS IN SALE OF PROPERTY

Contracts of Special Agency Require Exact Compliance With Terms—Saskatchewan Court Distinguishes General and Special Agency

IN a recent case coming before the Saskatchewan Court of Appeal it was decided that a land broker could not recover his commission if he had not lived up to the exact terms of the special contract of agency into which he had entered. The case was that of Fitchell vs. Lawton, decided on October 22, 1919.

The facts as reported in Dominion Law Reports are that Lawton listed with Fitchell three-quarters of a section of land at \$35 per acre, of which \$6,000 was to be paid in cash. The agreement, dated April 18, 1918, provided that the price included the crop then on the land and continued: "I hereby agree to place the above described land with C. D. Fitchell for sale for the next two months and thereafter to give it ten clear days' notice in writing of withdrawal or increase or decrease in price, its commission to be \$1 per acre."

Owner Sold to Agent's Client

After making the agreement, Fitchell took a prospective purchaser to see the land but he could not purchase because he could not raise the amount of cash which Lawton wanted. Then in November, after the crop had been taken off and sold by Lawton, the above prospective purchaser bought the land from Lawton for \$30 per acre on a smaller cash payment.

It was admitted that Lawton never gave Fitchell any notice as provided for by the contract, consequently on these facts, Fitchell claimed that as Lawton had never withdrawn the listing of the land from him, he was still Lawton's agent and as Lawton had sold the land to a party introduced by him, he was entitled to the agreed commission.

General and Special Contracts

In his judgment the Hon. Mr. Justice Newlands distinguishes a general from a special contract of agency. To explain the former he quotes a paragraph from the judgment in Toulmin vs. Millar (1887) 58 L.T. 96, which is as follows:—

"When a proprietor, with the view of selling his estate, goes to an agent and requests him to find a purchaser, naming at the same time the sum which he is willing to accept, that will constitute a general employment; and should the estate be eventually sold to a purchaser introduced by the agent, the latter will be entitled to his commission, although the price paid should be less than the sum named at the time the employment was given. The mention of a specific sum prevents the agent from selling for a lower price without the consent of his employer; but it is given merely as the basis of future negotiations, leaving the actual price to be settled in the course of these negotiations."

With reference to the special case in which the contract in question was classed as a special contract of agency, His Lordship says:—

"Here the price of \$35 per acre is not fixed as a price at which the defendant was willing to negotiate for the sale of his property, it was a specific price which plaintiff was to get in order to earn his commission, and that price was fixed for two months; thereafter the defendant could either withdraw, increase or decrease it. It is obvious that this later provision of the contract was put in because the crop was to be sold with the land, and that its condition at the end of two months would influence the defendant in making a new price. No new price was ever fixed for the land, so that, even if plaintiff's agency was continued over the two months, he had to obtain a purchaser at \$35 per acre in order to earn his commission. But no matter what construction is to be put upon these words providing for the notice in writing, it is obvious that the agency terminated on the sale of the crop by defendant, because thereafter it was impossible for plaintiff to sell the land and crop.

"The conclusion I have come to in this case is that the contract was a special and not a general agency; that in

order to earn his commission the plaintiff had to obtain a purchaser for defendant's land and crop at \$35 per acre, and, as he did not do this, he did not earn his commission.

"As has been said in other cases, the defendant is not to be prevented from selling his land because the purchaser introduced will not pay a price sufficient to pay the agent a commission."

In a somewhat similar case (that of Brown vs. Patchell) before the Saskatchewan Court of Appeal on the same date as the above, the Honorable Mr. Justice Newlands gave a decision to the effect that a land broker is not entitled to commission under an agreement to get a purchaser for land at a certain price per acre, where he introduces a party who has previously negotiated with the owner for a trade, which is subsequently completed.

SYDNEY BOARD OF TRADE

At the annual meeting of the Sydney, N.S., Board of Trade last week the following officers were elected: A. N. McLennan, president; J. F. Miles, vice-president; H. E. Coll, second vice-president. E. E. Shaw, retiring president, in his address outlined the work of the board as satisfactory, although little support had been given by the business people of the city. Arrangements will be made for co-operation with the Dominion Steel Corporation.

CALGARY BOARD OF TRADE

The annual meeting of the Calgary Board of Trade was held on January 13th. Routine business was transacted, and the following officers were elected for the coming year: President, T. A. Hornibrook; vice-presidents, J. B. Sutherland, P. L. Naismith, F. R. Freeze. Councillors—R. J. Lydiatt, C. P. McQueen, Geo. W. Craig, Dr. Egbert, Wm. Pearce, Geo. H. Webster, B. L. Robinson, F. H. Peters, Lorne E. Glover, John Halstead, Wm. Toole, C. A. Chesterton, A. J. MacMillan, R. L. Glover, Alex. Calhoun.

TO EXTEND SASKATCHEWAN MORATORIUM

The Saskatchewan moratorium will be extended until January 10, 1921, or at least until July 10, 1920, if a bill introduced by the Saskatchewan government goes into force. This bill was read a second time on January 14. A moratorium Act was passed by the Saskatchewan legislature at an emergency session in 1914, but the government did not put into effect an absolute moratorium as was done in some of the other provinces and in other countries. The existence of the Act, however, enabled the government to relieve conditions in certain sections of the province where there was a crop failure, by negotiation with mortgage companies, implement companies and other concerns, and the work of mediation between debtor and creditor is still being carried on by the department of agriculture.

In moving the second reading of the bill the Hon. Mr. Turgeon, attorney-general, pointed out that during the first few months of the war, protection was conferred upon volunteers and reservists by proclamation, this being supplanted later by the Volunteers and Reservists' Act. The government was also able to relieve conditions in the south-west of the province in 1914 by an agreement with the mortgage companies. A lot of good work had also been done by the department of agriculture in effecting a settlement between farmers and their creditors. This work was still being done and, in fact, was heavier now than at any time since partial moratorium protection was first provided. The experience of the past four years, he declared, was the best guarantee that the government would use its power with discretion. Mr. Turgeon said that in the early stages of the war strong pressure had been brought to bear upon the government to provide an absolute moratorium. This had been done in other provinces and in other countries, and some of them were sorry for it now.