

DRAKE, J.]

[Dec. 22, 1896.

HJORTH *v.* SMITH.

*Crown grant—Action to set aside deed—Escrow.*

This action was brought to set aside a Crown grant of a tract of land on Thule Island.

The plaintiff was a pre-emptor and had a store on the land in question. The defendant proposed a partnership with the plaintiff, and on the 26th of May, 1896, a memorandum was drawn up and signed by both parties. By that memorandum the plaintiff agreed to deed a half interest in the pre-emption claim therein described, the defendant to pay \$160 to the Government for the price of the land, and to put in a full line of goods into the store, each to share and share alike in all business and property transactions in Shoal Bay, a formal agreement to be drawn up. On the 8th of June following, a more complete agreement was prepared by Mr. Brydone-Jack, as solicitor for both parties, but such agreement contained material variations. The defendant was apparently to have the whole land conveyed to him at some future time, and the land to be sold for the joint benefit and the net profits divided on the 1st of July, 1897, and any land unsold at that date to be divided together with the profits arising from the business. The defendant was to erect such buildings as he thought necessary for the business.

At that time Mr. Brydone-Jack pointed out that under the Crown Lands Act it was illegal to convey a pre-emption claim until the Crown grant was issued, and the deed was accordingly signed without a date, and Mr. Brydone-Jack stated he was authorized by the plaintiff to retain the deeds, fill up the date and deliver it after the Crown grant was made.

The defendant paid the \$160 in order to obtain a Crown grant and also expended a considerable sum of money in putting up buildings for the business.

*Held*, 1. A partnership agreement as to land is valid and in no way conflicts with s. 26 of the Land Act, Con. Stat. B.C., c. 66.

2. That a deed to be held in escrow until it could have legal effect is valid, notwithstanding s. 26 of the Land Act.

*McPhillips*, Q.C., and *Magee*, for plaintiff.

*Davis*, Q.C., and *Brydone-Jack*, for defendant.

BOLE, J.]

[Jan. 13.

TOLLEMACHE ET AL. *v.* HOBSON.

*Commission to examine plaintiff.*

Application herein was made to issue a commission to examine Mr. Parker, a plaintiff, now in England, one of the grounds relied on being that he had to return to India to attend to important business there. Mr. Parker himself had not made any affidavit.

*Held*, following *Light v. Anticosti Co.*, 58 L.T. Rep. 25, that plaintiff Parker should himself have made an affidavit setting forth the above grounds in order to warrant granting the application.