

quarter share. Of course, the transaction must be treated as if the advance which he was bound to make had actually been made. Having made the advance, he is entitled to receive one-fourth of the whole of the proceeds, which is \$7,500, but as this would be the total amount which he would have received had he advanced the \$6,000, the \$6,000 must be deducted from this amount, making his profits in the transaction \$1,500.

It ought not to be forgotten that under the peculiar terms of the agreement the defendant puts in his land without receiving any special advantage therefrom, except his three-fourths of the proceeds of the sales. In a word, the plaintiff ought not to be permitted, not having made his advances, to have them paid out of a fund to which he is only entitled to one-fourth and the defendants to three-fourths.

With deference, I think the judgment of the trial Judge should be varied to conform to the construction put upon the agreement as contended for by the defendant. The defendant is entitled to costs in the Court below and of this appeal.

As under the amendment full relief can be given in the first action, the second action is dismissed without costs.

SIR WM. MULOCK, C.J. Ex., HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH, agreed.

HON. MR. JUSTICE RIDDELL:—McDougall owned a lot known as the McDougall veteran claim in the Whitney district of Algoma, this he expected to become the site of a town—he agreed with his employer Galbraith for him to “come in”—and an informal agreement was drawn up. It is as follows:—

Montreal, 11 Feby., 1911.

“It is hereby agreed between Hugh Allen McDougall of the City of Montreal, Coml. Traveller and William Galbraith of the City of Westmount, Merchant.

That in consideration of the sum of one dollar rect. of which is hereby acknowledged and for other good and valuable consideration.

The said Hugh Allen McDougall transfers and makes over to the said William Galbraith, one-fourth interest in a certain lot of land containing 160 acres more or less known and designated as lot No. 12 in the second concession of