

s. 19 of c. 77, S.C.N.B., "every will shall be construed with reference to the real and personal estate comprised therein, as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will."

Held, that lot A was not included in the devise to the daughter.

Teed, K.C., for plaintiff. *Powell*, K.C., for defendants.

Province of Manitoba.

KING'S BENCH.

Richards, J.]

SPARLING & HOULIHAN.

[June 24

*Vendor and purchaser—Secret profit paid by vendor to purchaser's agent—
Rescission of contract on account of collusion between vendor and agent
of purchaser.*

The facts in this case were very similar to those in *Murray v. Smith*, noted ante, p. 474, the same official, Tomlin, having, under pretence of acting in the best interests of defendant, induced him to enter into an agreement of purchase of a quarter section of land from the plaintiffs at a price \$200 greater than they had informed Tomlin they wanted for it, and after the defendant signed the agreement and paid \$200 on account the plaintiffs paid Tomlin \$100 for making the sale. There was in this case also a question raised as to misrepresentation of the area of the cultivated portion of the land, but the judge found that this was not proved.

The defendant had been in possession of the land for about sixteen months and had raised crops on it. He had also cleared the scrub and underbrush from about 70 acres of the parcel but not under any provisions in the agreement of sale. The plaintiffs' action was for cancellation of the agreement of sale for non-performance of the defendant's covenants, and to have the deposit declared forfeited in accordance with a provision in the agreement.

Held, that the defendant was entitled to have the agreement cancelled, his deposit repaid with interest, and to be paid for clearing the land and to a lien on and right of retaining possession of the land until payment of these sums and the costs of the action, less the sum of \$75.00 for use and occupation of the land.

Bradshaw and *Wilkes*, for plaintiffs. *Munson*, K.C., and *Hudson*, for defendant.