

So far as appears, so far as known to the plaintiff and as represented by the defendant, Stubbs is an innocent purchaser—a purchaser for value and in good faith.

The plaintiff simply asks that the defendant pay the profit money received by him and which belongs to the plaintiff as principal. There is no dispute about the amount, and there is no need of a reference. . . .

It was argued that in an action of this kind the measure of damages is not the difference between what the plaintiff got from McDougall and what the defendant got from Stubbs, but the difference between the real value on the date of the sale to McDougall and the price paid by the defendant for the McDougall transaction.

The cases cited by counsel for the defendant are, I think, distinguishable—but it is not unfair to the defendant to say that the real value, even at the time of McDougall's deed, was about the sum that Stubbs paid. I would rather accept a real transaction such as the sale to Stubbs than the opinion evidence of real estate agents as to the real value. The defendant did not give evidence on his own behalf. It may well be that the defendant knew that the real value at the time of the McDougall deed was practically what Stubbs paid a little later on.

In any event, the defendant should not complain if asked to pay only what he received.

The defendant's profit was \$60 a foot for 55 feet—\$3,300. As against the small cost of carrying this property from December, 1910, to the 29th June, 1911, the defendant may be allowed the 2½% commission. If sold in ordinary course by an agent, the owner would have to pay that. This would amount to \$82.50, and would leave \$3,217.50.

It appeared upon the trial that the plaintiff was pecuniarily interested only to the extent of an undivided half of the part of lot 35 in question. Then Mr. Hearst was in equity the owner of and entitled to the other half. Mr. Hearst was a witness at the trial on behalf of the plaintiff. No application was made to join Mr. Hearst as a party plaintiff, or to add him as a party defendant, and no claim was put forward by Mr. Hearst for damages.

As the matter stands, the plaintiff is personally entitled to only one-half of the above amount, namely, \$1,608.75, with interest at 5 per cent. from the 1st July, 1911. There will be judgment for the plaintiff for that amount with costs and without prejudice to any claim Mr. Hearst may make or to any action he may bring by reason of any interest he has in the land in question.