

fendant, could get full commission or split commission from another real estate man as well. The full commission understood as I have stated—would be 5% on first \$1,000 and 2½% on the additional amount. Shortly after, the defendant told plaintiff that he had sold 34 for \$90 a foot. Plaintiff said he “would not stand for that.” Defendant replied it had gone, plaintiff then went to his solicitor, about the matter.

It was ascertained that the defendant had given on behalf of plaintiff a receipt for \$100 on account of the purchase of lot 34. The defendant had no authority from plaintiff to sign such a receipt or to make such a sale, for price named. Under threats from plaintiff's solicitor that matter was supposed to have been adjusted, by the purchaser of 34 making no further claim to 34, and that the plaintiff should accept from a purchaser introduced by defendant \$100 a foot for 35. That is my interpretation of the evidence. Then the plaintiff found another person ready to buy 34 at a price which plaintiff was willing to accept, and then it was found that the defendant and McDougall would not withdraw the receipt or give a release of any claim to lot 34. An action was then commenced by the plaintiff against McDougall in reference to lot 34, and it was in that action upon examination of McDougall for discovery that the plaintiff found out that there was no sale of 35 to McDougall, but that the whole purchase from plaintiff in the name of McDougall was a scheme of the defendant. I find that the allegations in the statement of claim have been established and the only thing remaining is as to plaintiff's remedy.

The plaintiff asks that an account be taken of the profit realised by defendant out of the sale of plaintiff's land, nominally to McDougall, but really taken by defendant himself for his own profit.

This was a fraud upon the plaintiff. Had the plaintiff known the facts before the sale to Stubbs, he, the plaintiff, could have had the sale to McDougall rescinded.

So far as appears—so far as known to plaintiff and as represented by 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 *proprietor*. There is no dispute about the amount and there is no need of a reference.