

the execution of conveyances by the plaintiff under contract with McIntosh. For this the appellant was paid 25 cents an acre. Later, in the spring of 1911, according to the plaintiff's story, McIntosh and Garnham made the further arrangements already mentioned upon which the action was brought.

"It is perfectly obvious that the scheme entered upon and successfully carried out by McIntosh and Garnham, through the agency of the plaintiff, was a fraud upon the 'Land Act.' The conditions upon which surveyed public lands might be purchased, in 1910, were those laid down in sections 34 and 36 of the 'Land Act' of 1908; and one of these conditions is expressed in sub-section 11 of section 34, in the following words:

"34.—(11) 'No person who has given notice that he has applied for permission to purchase lands under the provisions of this section shall be entitled to give notice of his intention to apply for permission to purchase any other lands under the provision of this section until after he shall have either abandoned his application for permission to purchase or acquired a Crown grant of the lands for which he had previously given notice of his intention to apply for permission to purchase, and shall have obtained a certificate from the Commissioner that he has improved the said land to the extent of three dollars per acre; land which is bona fide cultivated shall be deemed to be improved land, and in other respects section 22 of this Act shall apply: Provided always, that no person shall purchase more than one tract of land, of whatever extent, under this section, until the above-mentioned improvements have been completed in accordance with the provisions of this Act.'

"McIntosh, Garnham and the plaintiff would not, of course, be entitled to purchase, under the provisions of this section, more than three separate tracts of land without having complied with the conditions as to improvements. The plan adopted to evade these provisions was to make a number of applications in the names of the nominees of McIntosh and Garnham. There can be no question that the real applicants were McIntosh and Garnham. The scheme was to obtain Crown grants of these lands in violation of the provisions of the statute, although in professed compliance with them, and then sell the lands to purchasers, who, in the ordinary course, would know nothing of the contrivance that had been resorted to. Any agreement entered into for the purpose of carrying out or facilitating the carrying out of this fraud upon the 'Land Act' would be an agreement which it would be the duty of the courts to refuse to enforce as soon as the character of it should become apparent. The contract set up by the plaintiff under which he agreed to assist in the sale of the lands is necessarily tainted by the character of the scheme as a whole. It follows that the action ought to be dismissed. For these reasons I concur in dismissing the appeal with costs."

### SUPREME COURT OF B. C.

Victoria, March 23, 1914.—The practice of land speculators staking lands wholesale in the names of persons from whom they obtain powers of attorney was declared by Mr. Justice Macdonald today to be an illegal extension of the right to stake by an agent given in the 1907 Amendment to the Land Act. In this he follows Mr. Justice Duff, who has declared that such a practice is a fraud upon the province.

#### Important Judgment

Mr. Justice Macdonald deals with the matter in a most important judgment, dismissing Robert W. Clark's claim for damages from George W. Swan for misrepresentation of the value of the land staked. His lordship's attitude toward the practice that has become so prevalent since the government provided this loophole for party friends, is all the more emphasized by the fact that he held the claim to be a good one on its merits, at the same time that he put the plaintiff out of court because of the fraudulent nature of the staking.

Clark was desirous of obtaining a large quantity of land in the Naas Valley and arranged with one H. N. Boss to stake it under the Land Act for purchase from the Provincial government. Boss, in turn, employed Swan, and acting under instructions from the plaintiff, supplied defendant with the names of persons who would be used as ostensibly desirous of purchasing such land. The defendant was to receive 25 cents for every acre of land so staked and reported upon.