

The appeal to the Supreme Court of Ontario (First Appellate Division), was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

F. D. Davis, for appellants.

E. S. Wigle, K.C., for respondent.

HON. SIR WM. MEREDITH, C.J.O.:—The nature of the action and of the judgment appealed from as well as most of the material facts are stated in the reasons for judgment in *Page v. Clark*, and need not be repeated.

It is clear, I think, that whether or not the agreement for the release of the rights of the appellants and Parker under the syndicate agreement was an agreement with the respondent or only with Jacques, it was intended that it should be dependent on the agreement for the sale to Jacques and that it should not be obligatory on the appellants and Parker if the sale should not be completed.

There is no evidence of any antecedent agreement, although an unsuccessful attempt was made to shew that the syndicate agreement had been previously abandoned. The agreement in question treats the syndicate agreement as being still in existence, and its language is inconsistent with there having been a previous abandonment of that agreement. It is "and we . . . having an agreement with David Clark registered . . . hereby agree to sign a release of the same at any time on being paid . . ."

What took place between the parties during the negotiations with Jacques leads to the same conclusion. According to the testimony of Healy, which on this point was contradicted, he spoke of himself and Robinet and Parker as being entitled under the syndicate agreement to part of the purchase money, but upon its being pointed out by the respondent, that the house and lot which he had reserved under that agreement was included in the sale to Jacques, Healy recognized the fairness of the position taken by the respondent, and did not press the claim. What I understand by this is that taking out of the price Jacques was to pay the value of the house and lot that the respondent had reserved under the syndicate agreement he would not realize from the sale more than the \$10,000, he was to be entitled to receive before the members of the syndicate would be entitled to anything.