

This amount was demanded by the defendant—and was paid to the defendant by the plaintiff's solicitor in this transaction.

The agreement for sale between the plaintiff and McDougall, made at the instance and upon the representation of the defendant, acting, as the plaintiff supposed, as agent for the plaintiff, was made on the 6th day of December, 1910. On the 8th day of December, 1910, the plaintiff's solicitor paid to the defendant, by cheque on the Traders Bank of Canada, the sum of \$162.50, commission above-mentioned.

This cheque is made payable to the defendant as the "commission on Miller sale;" and there was no other transaction between the parties to which the money received upon that cheque was or could be applied. On or about the 29th day of June, 1911, the defendant again sold the said land to one Edwin Stubbs for the price of \$160 a foot. This sale was carried out in the name of Neil McDougall as vendor—but at the request and for the advantage of the defendant.

As a matter of fact and beyond all question, the defendant represented to the plaintiff, and at the time of the sale to McDougall the plaintiff believed, that McDougall was a real purchaser for himself, and that the defendant was not as a purchaser interested in the property. It was not until after the sale to Stubbs that the plaintiff found out otherwise. I find that the defendant purchased this lot for himself—that McDougall merely acted at the defendant's request, and that, although a conveyance was accepted by McDougall and a mortgage given by him for part of the purchase-money—all was at the instance of the defendant and for his supposed benefit. The sale by McDougall to Stubbs was at the request of the defendant and for his benefit. The defendant made all the profit. Mr. McDougall did not make any or claim any benefit from this transaction.

McDougall merely represented the defendant, and acted at the defendant's request. . . .

[Reference to the evidence as to the defendant's conduct.]

I find that the allegations in the statement of claim have been established; and the only thing remaining is as to the plaintiff's remedy.

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