

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

The agreement for sale between plaintiff and McDougall, made at the instance and upon the representation of defendant acting, as plaintiff supposed, as agent for the plaintiff, was made on the 6th December, 1910. On the 8th December, 1910, 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 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 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 defendant purchased this lot for himself, that McDougall merely acted at defendant's request, and that although conveyance accepted by McDougall and mortgage given by him for part of purchase-money—all was at the instance of defendant—and for his supposed benefit. The sale by McDougall to Stubbs was at the request of defendant and for his benefit. The defendant made all the profit. Mr. McDougall did not make any or claim any benefit or profit from this transaction.

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

It will, perhaps, assist in dealing with the evidence to see what defendant attempted to do. It was stated by plaintiff, and not denied by defendant, that defendant wanted to get an option on plaintiff's lot 34, at \$90 a foot. The plaintiff refused but told defendant to make it \$100 a foot, and upon a sale of 34 at that price he, the plaintiff, would pay defendant full commission even if he, the de-