

company would pay to R. or his assigns, any excess realized above the option price of \$562,586. R. immediately afterwards assigned a one-half interest in the agreement to the plaintiff. By agreement of the same date, the company gave an option on the property to P. and C. for \$700,000, who in case of a sale by them under that option or any mutual modification thereof were to be allowed \$60,000. This option expired March 1, 1904. On October 27, 1904, a new option was given by the company to P. and C., and this by subsequent agreements was extended to June 15, 1905. On June 10 P. and C. agreed to sell the property to I. P. Co. for \$725,000. This agreement fell through. On October 2, 1905, a sale was made to I. P. Co. for \$675,000. By agreement of the same date the defendant company agreed to pay P. and C. \$100,000 for their services in connection with the sale, leaving \$575,000 as the net amount to the company from the sale. Prior to the sale the company having no notice of the assignment by R. to the plaintiff had agreed with R. that his option should be for \$580,000. The plaintiff claimed one half of the difference between the sum realized by the company from the sale and \$562,586.

Held, that under the circumstances the option given after the expiry of the first option to P. and C. was a modification of it within the meaning of the agreement with R., but that the company having no notice of plaintiff's assignment were free to deal with R., and that consequently the change made by R. in his agreement with the company was binding on the plaintiff.

A. O. Earle, K.C., for plaintiff. Currey, K.C., and McLellan, for defendants.

Province of Manitoba.

COURT OF APPEAL.

Full Court.]

[April 19.]

COUCH v. MUNICIPALITY OF LOUISE.

Municipality—Accident—Non-repair of highway—Work done on portion of road distant from point of accident—Notice of non-repair.

By sub-s. (a) of s. 667 of the Municipal Act, R.S.M.