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*Oct. 18.
*Nov. 2.

HAMILTON READ (DEFENDANT) .....APPELLANT;

AND

JOSEPH COLE (PLAINTIFF) .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Solicitor and client—Fiduciary relationship—Transfer of lands—Joint negotiations—Agreement to share profits—Intervention of third party—Solicitor's separate advantage—Bonus from third party—Obligation to account to client.

The Government of British Columbia had unsuccessfully attempted, through the agency of A., to obtain a transfer of the rights of a band of Indians in the Kitsilano Reserve. About a year afterwards C. became interested in the matter and arranged with R., a solicitor, that they should undertake to obtain the required transfer on the understanding that any profits made out of the transaction should be equally divided between them. Long negotiations with the band took place without any definite result, when, without the consent of C., through the intervention of A. at the request of R., the transfer was obtained and R. received a sum of money from A. as a share of the profits realized on carrying the transaction through. In an action by C. to recover one-half of the amount so received by R.,

Held, affirming the judgment appealed from (20 B.C. Rep. 365), that throughout the whole transactions the fiduciary relationship of solicitor and client had continued between R. and C. and, consequently, that R. was obliged to account to C. for what he had received from A. as remuneration for services in connection with the business which they had jointly undertaken in order to obtain the transfer of the title from the Indians.

APPEAL from the judgment of the Court of Appeal for British Columbia(1), reversing the judgment of

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

(1) 20 B.C. Rep. 365.

Hunter C.J., at the trial, and maintaining the plaintiff's action with costs.

The circumstances of the case are stated in the head-note and the questions in issue on the appeal are referred to in the judgments now reported.

J. A. Ritchie for the appellant.

J. W. deB. Farris for the respondent.

THE CHIEF JUSTICE.—This was an action brought by the respondent against the appellant (defendant) for a share of a commission received from the sale of lands. The plaintiff alleged an agreement with the defendant to use his influence with certain Indians to secure their consent to a sale of their reserve to the Provincial Government, and if successful he was to receive $20,000 as his commission. The defendant denied the alleged agreement and denied that he ever received any commission from the Government for services rendered in connection with the sale. The trial judge found in favour of the defendant. The case turned apparently upon the question whether a third party named Alexander, who received a commission from the Government, was an *alter ego* of Read. The trial judge held that this was not established. This judgment was reversed by the full court, Martin J. dissenting. The defendant now appeals.

The case for the appellant is that, accepting the version of the transaction as given by witness Alexander, the deal was off on the Saturday, and that he, Alexander, took it up again on the Monday following at the direct request of the Indians and independently of all that had previously transpired. When it was

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subsequently put through Alexander, being then alone interested in the transaction, paid out of the profits which he made not a commission but a bonus to the defendant. It is urged that whatever may have been the previous relations between Read and the Government they had ceased on the Saturday.

In my opinion Read should be held as a trustee in view of his professional relations with Cole. He would never have been brought into the transaction were it not for Cole, and on the whole evidence I am satisfied that the sale effected by Alexander, who had previously failed to secure a surrender of the Indian title, was the consequence of the previous negotiations carried on by Read and Cole in respect to which Read was bound to pay Cole $20,000. I entirely agree with the Court of Appeal that judgment should go for that sum.

The appeal is dismissed with costs.

DAVIES J. concurred with Duff J.

IDINGTON J.—A perusal of the evidence herein and careful consideration thereof and especially the admitted facts and circumstances presented therein do not lead me to the conclusion that respondent entirely failed, as pretended by appellant, in accomplishing what they had jointly agreed upon attempting but, on the contrary, that he had practically succeeded in bringing about all but the formal conclusion of the bargain with the Indians; and that formal part he was prevented from assisting in by the curious conduct of appellant.

Any other view must imply that the lavish com-

mission the Government allowed to be included in the price was little short of scandalous in light of the marvelous celerity and unanimity with which the Indians got through with the pow-wow and the signing of their surrender.

It seems inconceivable that such an afternoon's work alone could be so handsomely compensated for unless upon the hypothesis that much labour had preceeded it.

Appellant was confessedly ignorant of the Indians and everything relating to them till respondent sought him out as a solicitor in a position to be possibly helpful to pave the way for respondent's efforts being made to bear fruit, and instructed him accordingly.

Alexander seems to have been brought into the matter as a person who had tried and failed a year previously but apparently of necessity had to be conciliated.

He has been compensated accordingly. Securing him as an assistant or instrumental agent was only a step in the pursuit of that at which the parties hereto aimed.

Disagreeable surmises may arise in one's mind in surveying the unpleasant features of the whole transaction, but I cannot see how we can well do otherwise than assent to the reasoning upon which the Chief Justice and Mr. Justice Irving have proceeded in the court below.

If the parties hereto and Mr. Alexander, magnifying their importance, or the importance of their services, have misled the Crown by making misrepresentations to the Attorney-General as to the value of their services, then it might well be that none of

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them are entitled to anything in law. The appellant has not presented, indeed could not present with hopes of success for himself, such a defence. If it turns out as the result of this litigation that such a surmise is well founded and the Crown imposed upon, the remedy lies with the Attorney-General. On this case as presented we are helpless in that regard.

I think, therefore, this appeal should be dismissed with costs.

DUFF J.—I have no difficulty in this case in concluding that the judgment of the Court of Appeal is right and that the present appeal should be dismissed with costs.

Indeed, there is considerable reason to think that the appellant is fortunate in not having been compelled to account for the whole sum received by him after deducting a reasonable allowance for professional services. The respondent approached the appellant as solicitor, exposed to him, as his solicitor, the business in respect of which the appellant's professional assistance was required. At the appellant's suggestion the respondent consented to an arrangement by which they became jointly interested in that business. That was an arrangement which it was the appellant's duty not to permit the respondent to conclude with him, his professional adviser, without insisting upon independent advice being obtained. The respondent has not impeached the arrangement on this ground, but the relation of the parties has a most important bearing when the reciprocal rights and the duties of the parties under the arrangement come to be considered.

The relation between the parties being such as it was, and the appellant having allowed the respondent to leave his interests entirely in the appellant's hands, the appellant could not be heard to say that he failed to do what the most rudimentary notions of professional duty required him to do; namely, to include in the arrangement between him and the respondent every stipulation which reasonable prudence might suggest for the respondent's protection.

He cannot be allowed to say that the agreement in fact permitted him to act so unfairly towards the respondent as he now pretends he is entitled to do, to appropriate the entire profit of the business into which he was introduced as the respondent's solicitor to the entire exclusion of the respondent.

I do not think the respondent's claim can properly be treated as resting merely upon an agreement to pay a commission on a certain result being obtained, but, even on that basis, the appellant manifestly fails when the facts are looked at broadly. The conception of the respondent's rights put forward by the appellant is absurdity itself, the conception, that is to say, that the appellant's rights rest upon the condition that the Indians should be induced to execute an agreement with the appellant, *eo nomine,* for the "sale of their rights." The so-called "option" in itself (as any reasonably intelligent person who had taken the slightest trouble to inform himself of the status of the Indians must have known) could not be a thing of any legal substance; such a document could possess importance only as evidencing the terms by which the Indians were willing to consent to a transfer of the reservation. Its value consisted in the fact that the

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persons desiring to purchase the reservation were willing to pay a reward for obtaining it. The thing of substance was to get the consent of the Indians in order to earn this reward. Whether the consent was given in the form of an option granted to the appellant, *eo nomine,* or an option granted to somebody else (so long as it should be accepted as sufficiently evidencing consent and giving the appellant a title to the expected reward) was a matter of absolute indifference. The condition in substance was performed, the consent was obtained, the reward was paid and the sum received was no less than the sum that would have been received if the so-called option had been taken in the appellant's own name instead of the name of Mr. Alexander.

The respondent's title to relief, even on this basis, is thus complete.

ANGLIN J.—I think the correct conclusion from the whole evidence is that which the Chief Justice of the Court of Appeal appears to have reached, namely, that the sale effected nominally through Alexander was in reality the very sale in respect of which Read admits that he had agreed to pay the plaintiff Cole $20,000. Read's course of conduct in this matter, having regard to his professional status and his relations to the plaintiff, was indefensible. But still more amazing, if the story told by both parties to this action be true, was the assurance said to have been given by a member of the Government of British Columbia that if the twenty Indians interested in the Kitsilano Reserve could be got to give options for the acquisition of their rights in it for a payment to them of

$10,000 apiece the Government would purchase such options for the sum of $300,000.

The appeal, in my opinion, fails and should be dismissed with costs.

BRODEUR J.—This is an action for commission concerning the sale of Kitsilano Indian Reserve.

Cole, the plaintiff respondent, was trying to induce the Indians, owners of that reserve, to sell their rights. He had an interview with Mr. Bowser, Attorney-General of British Columbia, at his legal office in British Columbia, who intimated that the Government was prepared to purchase.

Cole wanted to have an option prepared in connection with the proposed sale of the reservation. He was directed by Mr. Bowser to confer with Hamilton Read, an employee in his office, who took his instructions. The option, however, was not prepared immediately; but some other interviews took place between Read and Cole and it was agreed that they should share the profits which would be made if the deal went through. Formal meetings of the Indians were called, and at one of those meetings some of the Indians wanted to consult with Mr. Alexander, a prominent citizen of Vancouver, who had always entertained friendly relations with them.

The appellant Read came back from that meeting, put himself in communication with Mr. Alexander, and it was understood between the two that they would divide the profits of the sale. An option was then prepared in Mr. Alexander's name which was signed by the Indians. The lands were sold to the Government and after the amount was paid a sum of

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about $80,000, representing the profits of the transaction, was divided between Mr. Alexander and Read. Cole now sues to have his share in the profits which Read realized.

Read became connected with this matter as Cole's solicitor, and their relations are those of solicitor and client, relations which have never been terminated. If Read has thought fit to make a deal with some other persons he has acted contrary to the mandate which it was his duty to execute.

The Court of Appeal found that he should give to Cole a share of the profits which he made on the sale of those lands. I cannot see how he could escape from being condemned to pay that share.

In these circumstances, the judgment condemning him to pay that share should be confirmed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Tupper, Kitto & Wightman.*

Solicitors for the respondent: *Farris & Emerson.*