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COLWELL *et al.* v. NEUFELD *et al.*

*Oct. 19, 20.

*Dec. 22.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA.

Vendor and purchaser—Sale of land—Agreement—Bond to secure payment of price—Conditions as to title.

APPEAL from the judgment of the Court of Appeal for Manitoba(1), reversing the judgment of Macdonald J., at the trial, and ordering that judgment should be entered in favour of certain defendants, now respondents.

The respondents, with some other persons, entered into an agreement with the plaintiffs, appellants, (except Elliott,) for the purchase of certain lands, at the price of \$2 per acre, payable on 1st November, 1905, and afterwards entered into the bond upon which the action was taken. Owing to differences which arose between the parties, the plaintiffs refused to proceed further with the execution on their part of the agreement unless the performance of the terms of the agreement by the other parties was guaranteed, and, on the 7th of September, 1905, the bond was executed. The bond was expressed to be given as security for the payment of the price of the lands and it also contained a covenant for the payment to the plaintiffs of \$2,500, part of the price, to and for their own use and benefit as liquidated damages for services rendered and to be rendered by the plaintiffs.

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

This bond was assigned to the appellant Elliott as collateral security for advances to his co-plaintiffs and, during the trial, he was added as a party plaintiff in the action. The case was tried by Mr. Justice Macdonald, who ordered judgment to be entered in favour of the plaintiffs. This judgment was reversed by the judgment now appealed from, the Court of Appeal being of opinion that the plaintiffs had failed to shew that they had acquired any title to or interest in the lands which they had agreed to sell. It was held by the Court of Appeal for Manitoba that, as the plaintiffs could not recover under the agreement they could not recover under the bond.

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After hearing counsel on behalf of both parties, the Supreme Court of Canada reserved judgment and, on a subsequent day, the appeal was dismissed with costs.

Appeal dismissed with costs.

J. B. Coyne for the appellants.

C. P. Wilson K.C. for the respondents.