

1911

FRANK J. WEBSTER (DEFENDANT) . . APPELLANT;

*Oct. 10, 11.

*Nov. 6.

AND

JAMES W. SNIDER (PLAINTIFF) RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA.

*Vendor and purchaser—Agreement to convey lands—Consideration—
Price in money—Breach of contract—Recovery for “money had
and received”—Sale or exchange—Damages.*

S. sold his interest in certain lands to W. for a consideration, fixed at \$19,000, of which \$16,000 was to be satisfied by the conveyance of other lands, alleged to be owned by W. W. then executed a written agreement purporting to sell these other to S., for the sum of sixteen thousand dollars, acknowledged then and there to have been received by the vendor; bound himself to convey them to the purchaser, with a clear title, within one year from the date of the agreement, and time was stated to be of the essence of the contract. Upon default by the vendor to convey the lands, according to the agreement, the plaintiff sued to recover the \$16,000, as money had and received for which no consideration had been given. In his defence, W. contended that the consideration mentioned in the agreement was not actually in cash but consisted merely of lands to be conveyed in exchange at a valuation fixed at that amount and, consequently, that the plaintiff could recover only damages to be assessed according to the value of the lands which he had failed to convey.

Held, that, in the absence of evidence of any special purpose as the basis of the agreement, the terms of the contract in writing governed the rights of the parties that the consideration mentioned in the agreement should be regarded as a price paid in money and consequently, the plaintiff was entitled to the relief sought. Judgment appealed from (20 Man. R. 562) affirmed.

APPEAL from the judgment of the Court of Appeal for Manitoba (1) affirming the judgment of Robson J.,

*PRESENT: Davies, Idington, Duff, Anglin and Brodeur JJ.

at the trial(1), by which the plaintiff's action was maintained with costs.

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The circumstances of the case are stated in the head-note.

A. C. Galt K.C. for the appellant.

Hugh Phillipps for the respondent.

DAVIES J.—I agree in the opinion stated by my brother Idington.

IDINGTON J.—The appellant and the late T. R. Snider owned together a farm and equipment, and the latter sold his interest in their joint property to the former for considerations fixed by the bargain at nineteen thousand dollars. Part of this price was liquidated by notes and otherwise, but the details thereof do not concern this appeal. The balance of sixteen thousand dollars it was agreed might be satisfied by the conveyance of a section of land in Saskatchewan which the appellant was bound by contract in writing to convey to the deceased.

This part, of the transactions had between the said parties, took the shape of an agreement (dated 15th October, 1908), which, on its face, purports to witness the sale by the appellant to the deceased, as purchaser of the said Saskatchewan land.

at and for the sum of sixteen thousand dollars in gold or its equivalent to be paid to the vendor at Winnipeg.

That sum the appellant, the vendor, acknowledged thereby to have received.

He bound himself to have the said land con-

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veyed to the deceased within one year from the date of the agreement so that he should have a clear title to the property within said one year from date.

It was expressly stipulated that time should in every respect be the essence of the agreement.

This latter provision, as well as the main purpose of the contract, was so far disregarded that the land was not conveyed as agreed when this suit was launched, on the 11th of May, 1910.

The deceased had, in his lifetime, transferred to the respondent all his interests in the purchase money for sale, of his interest, to appellant and securities therefor, and, amongst others, his rights under said appellant's contract of sale of said Saskatchewan land.

The respondent sued to recover from the appellant the said sum of sixteen thousand dollars and some other balance alleged to have become due on account of other dealings between deceased and the appellant.

The latter claims have been so disposed of that we are not now concerned therewith.

The respondent recovered judgment for said sum of sixteen thousand dollars and interest.

Thereupon appeal was taken by the present appellant to the Court of Appeal for Manitoba, and his appeal was dismissed with costs(1).

In appealing here he urges that in fact the entire dealings between him and deceased in truth constituted one bargain which was an exchange whereby deceased agreed to transfer his interests in the farm and equipment first mentioned to the appellant for the

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said Saskatchewan land and the notes, money and other considerations which were to make up the balance.

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He claims that on such a bargain for exchange all the respondent can recover by way of damages is the value of this land in Saskatchewan which has not been conveyed and is all that the respondent has lost by the breach of contract now in question.

I do not think it is necessary to enter upon any inquiry here as to what the measure of damages might be in such a case of exchange, for I can find no sufficient evidence to support the appellant's contention. All that appears is a sort of halting statement in his discovery examination put in evidence against him wherein he describes, without shewing how, the transaction as an exchange.

I cannot set aside the written document which this contradicts. Its terms are clear and concise as I have recited. And if I were to draw an inference from those terms and such of the facts as are put before us I would be inclined to say this bargain was independent of the other, and was an afterthought, though possibly immediately after the first agreement.

At all events it may well have been so, and, if not, it rested on the appellant to shew clearly and explicitly what is alleged by him.

If the agreement was of the nature he contends for, then it should have been made to appear in this now in question.

I prefer to take the document as it is and the facts that are admitted as to what preceded its execution. Doing so I see nothing in the appellant's contention as to damages.

He owes sixteen thousand dollars and interest for

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the balance of the price he agreed to give to deceased for what he got from him.

I see no reason to trouble ourselves with nice questions suggested as arising on the agreement by which the appellant bound himself to convey to the deceased the Saskatchewan land. Suffice it to say deceased never executed that document, nor relinquished therefor what he was to get from the appellant; that the latter had a chance given to him to satisfy the balance thereof, but failed to do so, and has failed to shew any good reason why he should have further indulgence.

His conduct throughout seems inexplicable. His attempt to get a new trial has been met by the Court of Appeal in its discretion refusing him that indulgence. It is the settled jurisprudence of this court not to interfere with such exercise of mere discretion unless it involves some question of law or a clear denial of natural justice.

It is consoling to know that in this case, even if the appellant has at last left on his hands the clear title to the land it lies in a country exhibiting meantime such remarkable rises in land values that if his alleged dealing was a fair one he cannot suffer.

I think this appeal must be dismissed with costs.

DUFF J.—The transaction (it was agreed by the parties) was to be treated as a sale for cash. There is no evidence that this agreement was entered into for any special purpose which would prevent us treating it as governing all the rights of the parties or, at all events, such rights as are in controversy in this action. That being so, the executed consideration must be regarded as money paid for which the con-

sideration has wholly failed. The evidence discloses no equity which could properly be held to disentitle the plaintiff to relief.

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ANGLIN J.—I agree in the opinion stated by my brother Idington.

BRODEUR J.—I agree that this appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Tupper, Galt, Tupper,
Minty & McTavish.*

Solicitor for the respondent: *T. R. Ferguson.*
