Supreme Court of Canada

Stuart *v.* Mott (1894) 23 SCR 153

Date: 1894-05-01

George W. Stuart (Plaintiff)

Appellant

And

Charles F. Mott (Defendant)

Respondent

1893: Dec.1,2, 1894: May 1.

Present—Sir Henry Strong C.J. and Fournier, Taschereau, Gwynne, Sedgewick and King JJ.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA. *Res judicata—Different causes of action.*

S. brought a suit for performance of an alleged verbal agreement by M. to give him one-eighth of an interest of his, M.'s interest in a gold mine but failed to recover as the court held the alleged agreement to be within the Statute of Frauds. On the hearing M. swore that he had agreed to give S. one-eighth of his interest in the proceeds of the mine when sold, and after the sale S. brought another action for payment of such share of the proceeds.

*Held,* reversing the decision of the Supreme Court of Nova Scotia, Fournier and Taschereau JJ*.* dissenting, that S. was not estopped by the first judgment against him from bringing another action.

Appeal from a decision of the Supreme Court of Nova Scotia[[1]](#footnote-2) reversing the judgment at the trial for the plaintiff.

The facts of the case are sufficiently set out in the above head-note.

Osler Q.C. and Newcombe for the appellant.

Borden Q.C. and Mellish for the respondent.

THE CHIEF JUSTICE.—The majority of the court are of opinion that the appeal should be allowed and the judgment of Mr. Justice Townshend restored.

FOURNIER J.—I am of opinion that the appeal should be dismissed.

TASCHEREAU J.—I think that the plaintiff's action was rightly dismissed. He is estopped from taking

[Page 154]

the position he would now take. I would dismiss the appeal.

GWYNNE J.—I am of opinion that this appeal should be allowed with costs and that the judgment of the court of first instance in favour of the plaintiff should be restored. The only real defence to the action urged before us was that the plaintiff's cause of action was estopped and barred by a judgment rendered in favour of the defendant in a former action at suit of the plain tiff which, as was contended, operated as *res Judicata* upon the matter of the present action; but concurring herein with the learned judge of first instance, I am of opinion that there is nothing in the former action which operates as a bar or estoppel in the present.

KING J.—I concur in the allowance of this appeal

Appeal allowed with cost

Solicitors for appellant: Henry, Harris & Henry.

Solicitors for respondent: Lyons & Lyons.

1. 24 N. S. Rep. 526. [↑](#footnote-ref-2)