

1967
*Oct. 13

A. & D. LOGGING CO. LTD. (*Plaintiff*) . . . APPELLANT;

AND

THE CATTERMOLLE-TRETHEWEY }
CONTRACTORS LTD. (*Defend-* } RESPONDENT;
ant) }

AND

CONVAIR LOGGING LTD. (*Defendant*) . . RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

Contracts—Agreement to log certain timber licences—Interpretation of agreement—Whether an interest in land or timber acquired by contractor.

Timber licences in respect of two timber berths and four timber sale contracts were issued by the Crown in right of the Province of British Columbia to Fleetwood Logging Co. Ltd. By an agreement dated August 11, 1961, that company granted to Convair Logging Ltd. the exclusive right to cut and remove all merchantable timber on the timber berths and timber sale contracts subject to certain terms and conditions, and the right to subcontract in that regard. By an agreement made on December 12, 1963, between the Fleetwood company and Cattermole-Trethewey Contractors Ltd., the former sold and transferred to the latter "free and clear from all liens, charges and encumbrances whatsoever" the two timber licences and "all of the right title and interest of the vendor in and to and all rights to cut timber under" the four timber sale contracts. Assignments of the timber licences and the timber sale contracts to Cattermole-Trethewey were consented to by the Minister of Lands, Forests and Water Resources as was required by the terms thereof. By this process Cattermole-Trethewey became the legal owner of the timber licences and timber sale contracts.

On December 19, 1962, Convair had entered into an agreement with A. & D. Logging Co. Ltd. whereby A. & D. was "to log the said TIMBER LICENCES for and on behalf of Convair". A. & D. obtained a judgment against Cattermole-Trethewey declaring that the former was entitled as against the latter to cut and remove the timber situated on the timber berths and timber sale contracts and for damages for being deprived of its cutting rights. On appeal, the Court of Appeal allowed the appeal and held that the agreement between Convair and A. & D. did not confer on A. & D. a *profit à prendre*. An appeal from the judgment of the Court of Appeal was then brought to this Court.

Held: The appeal should be dismissed.

*PRESENT: Cartwright C.J. and Abbott, Martland, Ritchie and Hall JJ.

APPEAL from a judgment of the Court of Appeal for British Columbia¹, allowing an appeal from a judgment declaring the appellant to be entitled as against the respondent Cattermole-Trethewey Ltd. to cut and remove timber situated on certain lands and for damages for being deprived of its cutting rights. Appeal dismissed.

1967
 A. & D.
 LOGGING
 Co. LTD.
 v.
 CATTERMOLE-
 TRETHEWEY
 CONTRACTORS
 LTD. *et al.*

D. M. Gordon, Q.C., and *H. R. A. McMillan*, for the plaintiff, appellant.

S. Martin Toy, for the defendant, respondent, The Cattermole-Trethewey Contractors Ltd.

At the conclusion of the argument of counsel for the appellant, the following judgment was delivered:

THE CHIEF JUSTICE (*Orally for the Court*):—Mr. Toy, it will not be necessary for us to call upon you. We are all in agreement with the view which Mr. Justice Tysoe expressed as follows:

It is my opinion that the agreement is plainly a contract of employment of the respondent as contractor to log and cut the timber for Convair. The respondent's remuneration is to be based on the sale price received by Convair on the sale of the logs produced by the respondent. The language of the agreement is quite inappropriate to the creation of an interest in the land or timber. It does not create such an interest but is a mere personal contract between the parties named therein for services by the respondent. It does not purport to give possession—exclusive or otherwise—of the land to the respondent. At most it purports, by necessary implication, to confer a right to go upon the land for the purpose of performing the contractual obligation to cut and log the timber thereon.

It follows that the appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the plaintiff, appellant: Copeman, Henderson, Davies & McMillan, Victoria.

Solicitors for the defendant, respondent, The Cattermole-Trethewey Contractors Ltd.: Boyd, King & Toy, Vancouver.

Solicitor for the defendant, respondent, Convair Logging Ltd.: John C. Bouck, Vancouver.