CHARLES LEMCKE AND JOHN S. CRAIK (PLAINTIFFS) ..... } APPELLANTS;

AND

W. C. NEWLOVE AND THOMAS H. NEWLOVE, EXECUTORS OF THE LAST WILL AND TESTAMENT OF THOMAS NEWLOVE, LATE OF LOREBURN, SASKATCHEWAN, DECEASED (DEFENDANTS) ..... } RESPONDENTS.

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*Feb. 10.
*April 20.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Executors and administrators—Loss to estate of benefit of asset—Liability for devastavit—Measure of liability—Expenses chargeable to estate—Findings of courts below on oral testimony—Sale of land—Crop-payment agreement—Operation of acceleration clause.

The Court refused to disturb the allowance by the trial judge, upheld by the Court of Appeal to the defendants, executors of an estate, of certain expenses as a proper charge against the estate, his findings having proceeded upon interpretation of oral testimony and credibility of a witness (as to the terms of an oral arrangement under which the expenses were incurred), and not being clearly shown to be erroneous.

Executors of a deceased's estate held an agreement of sale of land from T. to deceased and an agreement of sale of the land from deceased

(1) (1878) 10 Ch. D. 530, at p. 541.
(2) (1887) 56 L.T.N.S. 232.
(3) [1891] 1 Ch. 627, at p. 641, per Fry L.J.
(4) [1893] 1 Q.B. 744, at p. 748, per Kay L.J.
(5) [1899] 1 Ch. 891, at p. 894.

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

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to K., the amount owing by K. much exceeding that owing to T. Having defaulted in payment to T., who pressed for payment, and having made some unsuccessful efforts to obtain a loan upon the land, they quit-claimed to T., and subsequently assigned their interest in the K. agreement to their mother, who obtained a transfer from T., and paid him off, having borrowed, on the security of the land, sufficient for that purpose. Creditors of the estate sought to charge the executors for a *devastavit*.

Held (reversing judgment of the Court of Appeal, Sask.—21 Sask. L.R. 91) that, on the evidence, the disposition by the executors of the K. agreement was not justified, and they should be charged; but not (as directed at trial) with the difference between the amount owing from K. and that owing to T., but only with the value, as of the date of the quit-claim, of the estate asset represented by the K. agreement, including the equity of the estate in the land; and interest.

Executors' duties and liabilities, as to estate assets, and collection of moneys, discussed, with references to authorities.

Land was sold, in 1920, under agreement of sale, for $38,280, payable, $5,000 down, and the balance "by crop payments in annual instalments," with interest payable yearly, "and in the event of default being made in payment of any sums payable hereunder (including taxes and insurance premiums) or any part thereof, the whole purchase money to forthwith become due and payable." The purchaser covenanted to pay "the said purchase price and interest as herein set forth." The vendor was to convey "on payment of all the said sum of money with interest as aforesaid in manner aforesaid." The purchaser agreed to farm and seed each year, to harvest, and to deliver to the vendor his share of the crop each year immediately after threshing. The share so delivered was to be applied, at the then market price of the grain, in payment of interest, any arrears, and on account of the purchase money. The purchase price was to be paid in full on or before 31st December, 1930, and if the crop payments should not by then "have paid all sums payable hereunder, the balance unpaid shall on that date become due and payable * * * in lawful money of Canada." The purchaser's executors failed to pay certain taxes, and, crippled by crop failure in 1924, abandoned the land.

Held, the acceleration clause applied, and operated to make the whole balance of the purchase price forthwith due and payable in currency; it so operated, for default in payment of taxes, or for default in crop payments. (Judgment of the Court of Appeal, Sask., 21 Sask. L.R. 91, sustaining, on equal division, judgment of Brown C.J. on this point, affirmed).

APPEAL by the plaintiffs in certain respects, and cross-appeal by the defendants in certain respects, from the judgment herein of the Court of Appeal for Saskatchewan (1), on appeal from the judgment of Brown C.J. at trial.

The defendants were the executors of the estate of Thomas Newlove, deceased. The plaintiff Lemcke was

(1) 21 Sask. L.R. 91; [1926] 2 W.W.R. 830.

the vendor of certain land, under agreement of sale, to the said deceased. The plaintiff Craik had an interest in the said agreement of sale and in the said land by reason of an assignment by Lemcke to him as collateral security for certain indebtedness.

The plaintiffs, in the action, claimed that default had been made under the said agreement of sale, and asked for judgment against the defendants for the amount alleged to be due and owing under the agreement, a declaration of a vendor's lien, a direction for sale, and judgment against the defendants for any deficiency. The defendants, among other defences, pleaded *plene administravit*. In regard to this defence the plaintiffs contended that the defendants had been guilty of a *devastavit*.

The three main questions before this Court, and the decisions thereon below, were as follows:

(1) Whether the reasonable expenses of Mrs. Newlove, the defendants' mother, in connection with the management of the farm of the estate, should be allowed as a proper charge against the estate beyond what was realized upon the sale of certain stock and implements. Brown C.J. held that they should be allowed, and his judgment in this respect was affirmed by the Court of Appeal (1). The plaintiffs appealed on this question.

(2) Whether the defendants should be held liable for a *devastavit*, and, if so, in what measure, for their acts in regard to certain land which the deceased had purchased under agreement of sale from one Thompson, and had sold under agreement of sale to one Knox. The amount owing to the estate under the Knox agreement much exceeded that owing by the estate under the Thompson agreement. The defendants, under certain circumstances set out in the judgment now reported, quit-claimed their interest in the land to Thompson; and subsequently assigned all their interest in the Knox agreement to their mother. Thompson then transferred the land to the defendants' mother, and she borrowed, upon the security of the property, an amount sufficient to discharge the liability of the estate to Thompson, and paid him off. Brown C.J. held that the defendants should be charged with the differ-

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ence, as of the date of the quit claim, between the amount owing from Knox and the amount owing to Thompson, and interest. The Court of Appeal (1) reversed this decision, and held that, under the circumstances in question, the defendants should not be held liable. The plaintiffs appealed on this question.

(3) Whether, in view of the terms of the agreement of sale from the plaintiff Lemcke to the deceased, which was a "crop-payment" agreement, the "acceleration clause" therein applied, so that, as the plaintiffs claimed, on the default that occurred the whole balance of the purchase price became due and payable. Brown C.J. upheld the plaintiffs' claim in this respect, and was sustained in the Court of Appeal upon an equal division of opinion (1). The defendants cross-appealed on this question.

The material facts of the case bearing on the above questions are sufficiently stated in the judgment now reported.

W. H. B. Spotton K.C. for the appellant.

W. H. McEwen K.C. for the respondent.

The judgment of the court was delivered by

NEWCOMBE J.—This action was brought by Chas. Lemcke, the vendor of lands described as the north half of s. 21, and the east half of s. 20, in township 26, range 4, west of the 3rd Meridian in Saskatchewan, and John S. Craik, who had an interest in these lands by way of collateral security, against the defendants, W. C. Newlove and Thos. H. Newlove, as executors of the last will and testament of the late Thos. Newlove, deceased, alleging an agreement of sale of 10th February, 1920, between the plaintiff Lemcke and the deceased Thos. Newlove, whereby the latter agreed to purchase the lands described for the sum of $38,280, payable $5,000 at the date of the agreement, and the remainder by crop payments in annual instalments, with interest at 7%; the purchaser agreeing also to pay the taxes and to insure the buildings; and whereby it was agreed moreover that, if the purchaser made default in his payments, the vendor might determine and put an

(1) 21 Sask. L.R. 91; [1926] 2 W.W.R. 830.

end to the agreement. By the statement of claim it was alleged that the executors had made default in payment of principal, interest, taxes and insurance premiums stipulated for by the agreement, and that the whole purchase money had become due and payable by reason of the default. The plaintiffs therefore sought to recover $31,770.24, of which particulars were stated, claiming a vendor's lien for that amount; the sale of the lands; the application of the proceeds of the sale on account, and judgment against the defendants for the deficiency. The defendants pleaded, among other defences, *plene administravit*. The action was tried before the Chief Justice of the Court of King's Bench of Saskatchewan, who found for the plaintiffs upon the main question of default, and that the defendants should pay into court, to the credit of the cause, $32,057.41, with interest and costs; that the lands should be sold by the sheriff, if these moneys were not paid on or before the sale; the proceeds, after satisfying the expenses and costs, to be applied in payment of the net amount found due to the plaintiffs, with interest; the balance, if any, to be paid into court to the credit of the cause, and that the plaintiffs should have judgment against the defendants for deficiency "to the extent that they (the defendants) have or should have assets of the deceased in their hands." A reference was also directed to the local registrar of the court at Moose Jaw to take the accounts of the defendants as executors, and to ascertain and report what assets of the deceased were or should be in their hands as such executors.

Thomas Newlove died on or about 8th September, 1921. The executors farmed the lands for several years thereafter, and it was directed by the judgment that they should be given credit for all expenses incurred in connection with that, including any reasonable amounts paid or allowed to Robt. Newlove, their brother, or Margaret Newlove, their mother, in connection with the management of the lands. Differences developed at the trial with regard to some matters connected with the administration, in respect of which it was alleged that the executors had been guilty of a *devastavit*, which had caused a failure of the assets, and the learned Chief Justice disposed of these by his judgment.

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Upon the appeal to this court only two of the charges, which I shall now explain, remain in question.

The executors, with the assistance of their brother, Robert, had worked the farm after the testator's death in 1921 and during 1922, but the results, particularly during the latter year, were not encouraging, and, at the end of that season, they made an arrangement with their mother, the details of which are not very satisfactorily proved, but it appears that she was to take over the management of the farm, and advance money when necessary to pay the debts and the operating expenses, for which she was to receive $50 a month, and that, if the proceeds of the crop were insufficient for the expenses and her remuneration, she was to be recouped out of the stock and implements. The defendant, Thos. H. Newlove, says, in his cross-examination:

Q. Will you please tell me just what the agreement with your mother was?

A. I agreed that my mother would have the management of the place. She would be paid $50 a month; she would pay any of the debts, that is the present debts that the estate owed, any of those that were asking us for payment; she would run the place and pay expenses out of the crop as far as it went, and any other expenses she would pay herself; and she would be recouped out of the stock and implements, chattels.

Later, during the witness's cross-examination, his evidence upon discovery was read to him, in which he states the agreement as follows:

A. I made a bargain with her to pay her $50 a month, and to pay the expenses of the farm out of the crop as far as it would go, and that she was to have the horses, the machinery and to pay out of her own money any deficit that might accumulate or any debts that might accumulate in connection with the running of that farm.

* * *

Q. 286. Well, then, was the arrangement between the executors and your mother that she was to accept the stock and implements in settlement of any claim she had against the estate for advances?

A. For any advances she may have made.

Q. 287. Whether it was more than what she realized out of the stock and implements or not?

A. Whether it was more or less.

Q. 288. She is not making any claim against the estate, and cannot make any claim against the estate for any surplus so advanced?

A. There would be no use. There isn't any.

Q. 289. But I mean, that was your bargain?

A. That was the bargain?

Q. 290. That was the bargain that was made in 1922?

A. That was the bargain that was made in 1922.

Q. Not up to this time——?

Here the witness interposed to say that these answers were not correct, and, later, when his attention was directed to

the answer to the effect that his mother was to have the proceeds of the stock and implements, whether more or less than the amount of her personal advances, he answered that

> what I meant to say was that if the chattels came to more than what she advanced, she was to be paid what she advanced, but the rest would be estate money.

And he maintained that the word "less" in his answer upon discovery was a mistake. The arrangement between the executors and their mother, whatever be the effect of it, was made orally, and there is no proof of it except by the evidence of Thos. H. Newlove.

The stock and implements were sold at public auction, realizing an amount insufficient to satisfy Mrs. Newlove for her outlay, and it was claimed on behalf of the plaintiffs that she was not entitled, under the arrangement in proof, to look to the executors for indemnity beyond what was realized upon the sale, and therefore that the balance was not chargeable against the estate. The learned Chief Justice however directed by his judgment that:

> on the taking of the said accounts the executors be charged with the proceeds of the chattels sold at public auction in the fall of the year 1924, and that any reasonable expenses incurred by Mrs. Margaret Newlove in connection with the operation of the farm be allowed as a proper charge against the estate.

This direction, although confirmed upon review by the Court of Appeal, is one of the grounds of the plaintiffs' appeal to this Court. I am of the opinion that the finding of the learned Chief Justice, with regard to the disposition of these expenses, upheld as it is by the Court of Appeal, ought not to be disturbed. It proceeds upon the interpretation of the oral testimony taken at the trial, and the credibility of the witness, as to which the finding at the trial should be accepted, since it is not clearly shown to be erroneous.

The executors produced an inventory of the testator's property for succession duty purposes, with the statutory affidavit; they included in this inventory an item reading as follows:

> N. ½ Sec. 31, Twp. 25, Rge. 4, West 3rd Meridian, Saskatchewan, purchased by deceased from one Richard A. Thompson by agreement for sale dated the 3rd day of December, 1917, under which there was owing by deceased at date of death the sum of $3,985.49, and sold by deceased to one Samuel Knox under agreement for sale dated January 31, 1920, under which there was owing to deceased at date of death the sum of $15,895.35, leaving a net equity in deceased at date of death $11,909.86.

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The fair market value, as well as the net value, of this property is stated in the inventory to be the above mentioned sum of $11,909.86. Evidence of the transaction was given at the trial corresponding to the description in the inventory. The agreement whereby the testator purchased the property from Thompson was produced, but the agreement between the testator and Knox was not produced. It is admitted that they were both half crop agreements, and moreover it was not disputed at the trial that the estate had a valuable equity in the Knox agreement. What happened with regard to it was this. In 1921 Knox paid to the defendants $913, and, in 1922, $1,070, on account of the purchase price. The defendants accounted to Thompson for the $913, but failed to account for the $1,070, which they applied in payment of their debts and operating expenses connected with the working of the farm. Thompson should have received the latter amount, and he insisted upon the payment. In the meantime Knox, considering that he had agreed to pay more for the land than it was worth, expressed his dissatisfaction with the agreement and threatened to leave the place, whereupon the defendants forgave him $3,000, on account of the price, a concession which both courts have found to be not unreasonable. Then, in order to accommodate the situation which had arisen as between themselves and Thompson, owing to the withholding of their share of the crop for 1922, they made some unsuccessful efforts to obtain a loan upon the land, and afterwards, on 9th July, 1923, quitclaimed their interest in the land to Thompson, and, by assignment of 21st July, 1923, to which Knox was a party, assigned all their interest in the Knox agreement to their mother for the expressed consideration of $4,000. Thompson then transferred the land to Mrs. Newlove, the mother of the executors, and she borrowed, upon the security of the property, an amount sufficient to discharge the liability of the estate to Thompson, and paid him off. It appears that at this time the Knox agreement was in good standing as between Knox and the estate, so far as delivery of half the crop was concerned, but that Knox was in default in the payment of taxes to the extent of $249, an amount which apparently was subsequently paid by Mrs. Newlove. In the result, therefore, Mrs. Newlove acquired the Knox agreement, and the land therein described, by pay-

ing only the balance due to Thompson under his agreement with the testator; the estate thus seems to have received no benefit whatever from the asset, which, as already shewn, had been inventoried for succession duty purposes at $11,909.86, an amount which, however, should be reduced by the allowance of $3,000 which the executors subsequently made to Knox. In these circumstances, the learned Chief Justice directed that upon the taking of the accounts the defendants should be charged with the difference between the amount owing from Knox to the testator under the agreement of 31st January, 1920, and the amount owing from the testator to Thompson under the agreement of 3rd December, 1917, to purchase from Thompson, after allowing the reduction of $3,000 which the executors had conceded to Knox, this difference to be ascertained as of 9th July, 1923, and to bear interest from that date at the rate of seven per cent per annum. The Court of Appeal, on the contrary, was of the view, for reasons stated in the judgment of Martin J.A., that the executors, in the embarrassing circumstances in which they were placed, had acted honestly in accordance with what they considered to be in the best interests of the estate, and that, while they should, in the circumstances, have applied to the Court for advice, they might fairly be excused under the provision of s. 44 of the *Trustee Act*, R.S.S., 1920, c. 75; accordingly it was ordered that the judgment of the Chief Justice should be varied by striking out that portion of it which relates to the responsibility of the executors for the amount outstanding on the Knox agreement. The court has thus taken a benevolent view, and I would sustain it if I could, but I regret that I cannot, upon the evidence in the case, find any justification for the disposition of the Knox agreement which is disclosed. It was admittedly a valuable asset, and it passed into Mrs. Newlove's hands, inferentially by reason of a family arrangement, and without any apparent consideration moving from her to the estate. She was able to borrow upon the property an amount sufficient to discharge the vendor's claim, somewhat less than $4,000, and acquired the title subject to the sale to Knox, which must have shewn a profit, if it were carried out. There is no evidence whatever as to what was subsequently done with the property, or whether or not Knox

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completed his purchase. Mrs. Newlove gave no testimony, neither did the defendant Thos. H. Newlove's co-executor and co-defendant, although it would seem that, as he took nothing under the will, he left the administration of the estate in the hands of his brother, who was a beneficiary. The transaction indeed does not appear to differ substantially from a gift by the executors to their mother of the asset represented by the Knox agreement, and one way by which the executors may waste and misspend the testator's estate is, as we are told by Wentworth's Office and Duty of Executors, a work distinguished for its "sound principles and authentic information," p. 226; 14th Am. Ed., pp. 300, 301:

> By the Executor his plain, palpable, and direct giving, selling, spending or consuming the Testator's Goods after his own will, leaving debts unpaid.

Therefore I think that the learned Chief Justice was right in directing that the defendants should be charged, but I am afraid that some injustice may be done by his measure of the charge. It is laid down by the venerable authority which I have quoted, at p. 236, that a wasting executor shall incur damages or make his own goods liable no further than the value of the testator's goods wasted or misadministered.

The appellants rely upon a passage in Williams on Executors which refers to *Lowson* v. *Copeland* (1), where Lord Thurlow held an executor liable to answer for 100 pounds not got in from a bond debt in consequence of his neglect to secure payment; but that decision relates to money lent upon a mere personal obligation. *Powell* v. *Evans* (2), is another case where the executors were charged with loss by neglecting to collect money lent by the testator upon a bond, and it was shown that the money could have been realized if the executors had been diligent, and there were also other special circumstances; it was there held that, inasmuch as the money was due upon personal security, the executors ought not, without great reason, to have permitted it to remain longer than was absolutely necessary. See also *East* v. *East* (3); also *Bailey* v. *Gould* (4). In the latter case, Alderson B., observed, at p. 226:

(1) (1787) 2 Brown's Ch. Cas. 156.
(2) (1801) 5 Ves. 838.
(3) (1846) 5 Hare 343, at p. 348.
(4) (1840) 4 Y. & C. 221.

But as to the £50, it was outstanding on personal security which had been taken by the testator, and which had not been got in, but on which interest had been paid up to the date of the report. The Master took the correct distinction between property invested on real and property invested on personal estate; holding that, inasmuch as the personal security changes from day to day by reason of the personal responsibility of the party giving the security, and as a testator's means of judging of the value of that responsibility are put an end to by his death, therefore, although no loss may have occurred in the interval, the executor who has omitted to get it in within a reasonable time, becomes himself the security.

These cases rule in the circumstances to which they apply, but the general and reasonable rule, which should govern this case, is that stated by Wentworth, and by the Master of the Rolls (Sir John Romilly) in *Clack* v. *Holland* (1), where he says:

Where it is the duty of a trustee or executor to obtain payment of a sum of money, the trustee or executor is exonerated and never required to make good the loss, if he has done all he can to obtain payment, but his efforts have not proved successful. Nay, more, if he has taken no steps at all to obtain payment, but it appears that if he had done so, they would have been, or there is reasonable ground for believing that they would have been ineffectual, then he is exonerated from all liability. *In re Tucker* (2).

In the present case the agreement for sale, which is not produced, had been made with the testator, and, while it probably embraced a covenant by the purchaser to pay the consideration money in the manner stipulated, the vendor meantime retained by way of security his interest in the land; and it is, I think, most probable that his security consisted chiefly of that interest. The purchaser, Knox, had performed his obligations, except as to the payment of some taxes, and there is no proof that the executors acted negligently or unreasonably, save with relation to the transactions by which the agreement and property passed from the executors to Mrs. Newlove. In respect of these transactions the asset was not properly administered, but the executors did not, I think, therefore incur a greater liability than to indemnify the estate for what it had lost.

Consequently, while the judgment of the Court of Appeal as to the Knox agreement cannot, in my opinion, be upheld, that of the trial judge should be varied by directing that the defendants shall be charged only with the value, as of 9th July, 1923, of the estate asset represented by

(1) (1854) 19 Bevan 262, at p. 271.

(2) [1894] 1 Ch. 724, at p. 734.

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the Knox agreement, including the equity of the estate in the land therein described, and the interest.

This disposes of the items in question upon the appeal, and it follows that the appeal should be allowed in respect of the Knox agreement, and that the trial judgment should be restored subject to the variation which I have outlined. But inasmuch as the plaintiffs appeal upon two items, and have failed as to one, and, as to the other, have succeeded only partially, I would not allow costs.

There remains the defendants' cross-appeal, which raises an important question as to the interpretation of the agreement of purchase of 10th February, 1920, between the plaintiff, Chas. Lemcke, and the testator, Thos. Newlove. It is stipulated by the first clause of the agreement that the vendor agrees to sell, and the purchaser agrees to purchase, the land therein described, for the price of $38,280, payable as follows:

> the sum of Five Thousand ($5,000) dollars on the day of the date hereof, the receipt whereof is hereby, by the vendor acknowledged, and the remaining sum of Thirty-three thousand two hundred and eighty dollars by crop payments, in annual instalments as hereinafter provided; together with interest at the rate of seven (7%) per centum per annum from the day of the date hereof, to be paid on the said sum or so much thereof as shall from time to time remain unpaid and as well after as up to maturity; such interest to be payable yearly on the First day of November until the whole of the moneys payable hereunder are fully paid and the first of such payments of interest to become due and be payable the first day of November, A.D. 1920; interest in arrear to be forthwith added to the principal and to bear interest at the said rate; and in the event of default being made in payment of any sums payable hereunder (including taxes and insurance premiums) or any part thereof, the whole purchase money to forthwith become due and payable.

The purchaser agreed to farm and seed the land each year, and to harvest the crops, and to deliver to the vendor his share of the crops each year immediately after the threshing. The executors, down to 1924, inclusive, accounted to the plaintiffs for their full half share of the crops, but in 1924 the wheat was almost a total failure, and the executors, after delivering to the plaintiffs their half share, could not pay the expenses or buy feed, and so they sold the stock and implements, and abandoned the land. Moreover they had not paid the taxes for 1923 or 1924, and the plaintiffs claimed in the action under the clause above quoted the whole purchase price, as payable in money. The learned trial judge upheld the claim, and he was sustained

in the Court of Appeal upon an equal division of opinion, Lamont and McKay JJ.A., holding that the acceleration clause did not apply, while the Chief Justice and Martin J. agreed with the trial judge. A similar question, in other cases, had previously given rise to some difference of judicial opinion in the Prairie Provinces. In Manitoba (*Sherrin* v. *Wiggins* (1)) Mathers C.J., had declined to give effect to such a clause in an agreement for the sale and purchase of land where the parties had contracted for the delivery of half the crops, but the agreement in that case seems to differ from this in material particulars. In *Wellington* v. *Selig* (2), the question came before the Court of Appeal of Saskatchewan in a case which is perhaps indistinguishable, and the court divided equally upon it, Newlands and Lamont JJ.A., holding that it was impossible to accelerate payments which were to be made by delivery of crops, while the Chief Justice and Elwood J.A., would give effect to the clause. Subsequently, in *Pattison* v. *Behr* (3), McDonald J. held the clause applicable. To the like effect is the judgment of Bigelow J. in *Central Canadian Securities Ltd.* v. *Brown* (4).

Now while it is true, as stated in some of these judgments, that crops to be grown in future years cannot be made actually deliverable at the present time, I am disposed, with great respect, to think that effect may be given to the clause in question in this agreement without attributing to the parties any such impossible intention. The consideration is stated in dollars, and, deducting the $5,000 which were to be paid down, the remainder is to be paid by "crop payments in annual instalments." The purchaser covenants with the vendor that he "shall and will pay the vendor the said purchase price and interest as herein set forth." The vendor is to convey "on payment of all the said sum of money with interest as aforesaid in manner aforesaid." By the 9th clause of the agreement it is stipulated that:

> THE SAID SHARE OF CROP so delivered under the provisions hereof by the purchaser to the vendor shall be by the vendor applied at the then market price of the grain, first, in payment of the interest payable hereunder in that year; next, in payment of arrears of any kind payable hereunder; and the balance on account of the purchase money.

(1) [1917] 2 W.W.R. 895.
(2) (1919) 13 Sask. L.R. 12.
(3) (1920) 13 Sask. L.R. 137.
(4) (1921) 15 Sask. L.R. 97.

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By clause 18 it is provided:

> NOTWITHSTANDING anything herein contained, it is agreed that the said purchase price of the said land is to be paid in full on or before the thirty-first day of December, A.D. 1930, and if the crop payments herein provided to be made shall not by that time have paid all sums payable hereunder, the balance unpaid shall on that date become due and payable by the purchaser to the vendor in lawful money of Canada.

These and other provisions of the agreement show very clearly that the half crop delivered each year was to be taken as a payment in money, computed at its value in money, and that the delivery of crop is treated as payment to the extent of the market price of it. It is, of course, necessary to reach a conclusion whereby if possible a reasonable meaning may be given to every clause of the contract, and I have no doubt that, when the parties stipulated for the event of default being made in the payment of any sums payable under the contract, they had in mind the crop payments as sums payable thereunder. The clause was certainly never introduced with the object of providing for the event of the purchaser not paying down the $5,000 which was to be paid on the day of the date of the agreement; the vendor was absolutely protected as to that; but $33,280 still remained payable under the agreement, exclusive of taxes and insurance premiums, and this sum was, until 31st December, 1930, payable by crop payments. Therefore, except as to the taxes and insurance premiums, the clause can have no application, and is ineffective and useless, unless it be intended to operate in the event of default in the crop payments. Then the consequence of default is declared to be that the whole purchase money shall forthwith become due and payable. And, since crops to be grown in the future could not at the time of default be delivered, it is, I think, reasonable to conclude that the purchase money would at that time become due and payable in currency. But moreover, in this case, the executors were in default in payment of the taxes, and it is expressly stipulated that, in the event of such default, the whole purchase money shall forthwith become due and payable.

Clause 18, upon my interpretation, adds nothing to the case, except to suggest words by the use of which the difficulty which has arisen might have been avoided. Its purpose is to fix a date, 31st December, 1930, when the purchase price is to be paid in full, and beyond which the credit is not to be extended. The provision is that " the

balance unpaid shall on that date become due and payable by the purchaser to the vendor in lawful money of Canada." The words "in lawful money of Canada" are thus introduced, and, if they had been expressed at the end of clause 1, the point in question could not have arisen, but, in my view, these words are necessarily implied at the end of the latter clause. "The whole purchase money," according to its meaning in the concluding lines of clause 1, must be figured in currency, and it is only in currency that it can forthwith become due and payable.

I would dismiss the cross-appeal with costs.

Appeal allowed in part, without costs.
Cross-appeal dismissed with costs.

Solicitor for the appellants: *W. H. B. Spotton.*
Solicitors for the respondents: *Martin, McEwen, Martin & Hill.*