Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Price v. *Neault, from the Court of Queen's Bench for Lower Canada; delivered* 11*th December* 1886.

Present:

LORD BRAMWELL.
LORD HOBHOUSE.
LORD HERSCHELL.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

In this case the Plaintiff, who is also the Appellant, seeks to recover a plot of land in the possession of the Defendant, and the question is whether transactions which passed between the Plaintiff and his agents on the one hand, and the Defendant and his predecessors in title on the other, are such as to preclude the Plaintiff from recovering the land. The Defendant, now Respondent, has not appeared on the appeal, so that their Lordships are under the disadvantage of deciding the case on an *ex parte* hearing.

The land in question is a small portion of a tract of wild woodland purchased by the Plaintiff in the year 1865, and then lotted out by him for settlement. The Plaintiff himself appears to have taken little or no personal part in the management. He employed as local agent one Mr. Beaudry, and as superior agent his brother David Price, who resided at a distance, apparently in Quebec.

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Beaudry kept a book in which he entered the names of persons who desired to acquire plots of land. It appears that settlers entered freely upon vacant plots, and effected improvements upon them, without any title except the entry of their names in the book; and perhaps that formality was not always observed. When one of them became desirous of perfecting his title, or was warned by Beaudry that he must either pay for the land or give it up, he would repair to Beaudry's office and take up a formal contract on payment of the price or of some instalment of it. The contracts were prepared by Beaudry, and signed by the Plaintiff or by David Price. Beaudry states that David Price sometimes refused to sign the deeds forwarded to him, but he does not show under what circumstances.

In November 1865 Beaudry received instructions from David Price, which are not quite clear, owing to that gentleman's very imperfect mastery of the French language in which he wrote. They related to the order in which the plots should be sold, to the purchase money for them, and to the wood upon them; and he states that certain persons had applied to him for plots, and that he had referred them to Beaudry as his agent.

Prior to 1872 one Ludger Neault applied for the plot now in question, which is distinguished as No. 34 of Range B North, and his name was entered for it in Beaudry's book, but he did no work upon it. In 1872 he made over his interest (gratuitously it seems) to Marcelin Perron, who wished at once to improve the land. Perron's evidence is to this effect: he did not go to Beaudry's offices to give in his name; he only asked him for permission to work and to build a flour mill on the plot. He told Beaudry that he had purchased the plot for Ludger Neault on the same conditions on which Neault held it, and asked if

he might work on it and build a flour mill; Beaudry said Yes, telling him to work. Upon this Perron entered, cleared a small quantity of land, and built his mill. In November 1873 he sold his interest to the Defendant for 900 dollars. The Defendant has been in possession ever since, and has effected larger improvements in the shape of clearances, buildings, and roads. He has also paid the local taxes and contributions, and the municipal officers say that he paid them as proprietor. But he has never got a written contract, nor has he paid any purchase money.

In December 1882 the Plaintiff gave the Defendant notice to quit, and immediately afterwards brought the present action, in which he claims possession of the land with 400 dollars damages. After action brought the Defendant tendered 150 dollars as the purchase money and paid that sum into Court, alleging that the Plaintiff or his agents had fixed the purchase money at that amount in the preceding October.

The Superior Court gave the Plaintiff a decree for possession with costs, saving to the Defendant the right to recover the value of his improvements. The Defendant appealed, when the Court of Queen's Bench reversed the decree, and dismissed the action with costs, reserving to the parties all rights which either could enforce against the other in respect of the said immoveable property. That is the decree now appealed from.

The ground laid by the Court for their decree is that the Defendant and Perron were put into possession of the land, had possessed it for more than ten years, and had made substantial improvements within the sight and knowledge and with the consent of the Plaintiff by means of his agents, and on a promise that he would consent to a deed of sale for the price of 150 dollars.

Their Lordships cannot find their way to the whole of the conclusion thus expressed. The transactions between Beaudry on the one hand and Ludger Neault and his successors on the other, rest entirely on Perron's evidence. It has been shown under what circumstances Perron entered and made improvements. Translating his language freely, he proceeds thus:—"I did "not ask to buy the plot of Beaudry. I only "asked him if I might work and build a flour "mill. I had bought the plot of Neault. I was "bound to observe the conditions under which "the plot had been sold to him, that is to say, "Beaudry had to notify Neault to come in and "take up his contract. I never asked Neault "what price he was to pay to the Plaintiff for "the land. I did not exactly know the price "at which the Plaintiff was then selling those "lands. I did not know that there was a price "fixed for all the lots of land of the said range B "north. I do not think that the price was the "same for each of the lots. I expected to pay "for the ground the price which the Plaintiff "was selling his lands in that range. I thought "that price was one dollar per arpent. I never "heard tell of it. I did not know it."

On that evidence it is difficult to say that there was any promise or contract as regards the purchase money. The book kept by Beaudry has not been produced, nor does he give any such description of it as would justify their Lordships in inferring a contract to sell from the entry of a name. And there is even greater difficulty in fixing 150 dollars as the price. The reason assigned for doing so is that on the 6th October 1882 Mr. Ray, who had then succeeded David Price as chief agent, wrote a letter to Beaudry to the effect that he might sell for 150 dollars. But that instruction was revoked on the 3rd November, and during those four weeks the

Defendant did nothing by way of completing any contract, nor was his position altered in any way by the discretion so given to Beaudry. It would seem from David Price's instructions in November 1865 that the prices for lots in general were to be either 5*s*. per arpent for the whole of the lots, or a higher sum (apparently 7*s*. 6*d*.) per arpent with a deduction of 50 per cent. for uncultivable land. On the 3rd November 1882 Ray forbad any sales except at $1\frac{1}{2}$ dollar per arpent. And in a letter from David Price to Beaudry, to which the date of 21st September 1872 is assigned (p. 37 of the Record), $1\frac{1}{2}$ dollar is assigned as the price of the lots in Range B, and some special directions are given with respect to a site for a mill, which are so expressed as to be almost unintelligible. The extent of the plot in question is about 187 arpents.

Moreover, their Lordships feel great difficulty in finding a *commencement de preuve* for a complete contract. They conceive that a *commencement de preuve* must be some written evidence which lends probability to that which is sought to be proved by oral evidence. The Court of Queen's Bench find this *commencement* in David Price's letter of November 1865, and in Ray's letter of October 1882. But there is no oral evidence of anything to which Ray's letter lends probability, for, as above observed, nothing was done upon it by the Defendant till after the permission given by it had been annulled. And it is hard to see how David Price's letter, which on the most favourable construction of its obscure expressions amounts to a general permission to Beaudry to sell lots in Range B and to deal with some place suitable for a mill, can lend probability to a particular contract in favour of a particular person.

But it does not follow that because there was no completed contract, the Plaintiff can

recover the land. Their Lordships hold it to be clearly proved that Perron originally dealt with Beaudry on the position which Ludger Neault had gained by the entry of his name in Beaudry's book; that proceeding on this footing, and after assurances from Beaudry that he would be safe, Perron effected substantial improvements; that he did so with the expectation that he could claim to have the land transferred to him upon paying the proper price; that, considering the condition of the property, the course of business pursued in getting it inhabited, and the assurances of Beaudry, such expectation was one which any reasonable man would entertain; that the Defendant succeeded to all Perron's rights; and that he in his turn has effected large improvements. If Beaudry had been the owner, his proceeding to recover the land after Perron and the Defendant had bestowed money and labour on it, would have been a glaring injustice; and their Lordships hold that by his conduct Beaudry laid himself under an obligation, such as in Article 1041 of the Civil Code is called a *quasi* contract, not to disturb Perron in his possession, and to transfer the land to him or his successors in title on payment of the purchase money. It may be observed that in the case of one Ayotte (Rec., p. 32,) Beaudry himself said in the year 1876, that, though he had no signed contract, he could not be deprived of the plots of which he had taken possession, and for which he had made some payments.

The question then arises whether the Plaintiff is bound by Beaudry's acts, and it has been argued at the bar with great earnestness that Beaudry had only an authority which was confined to management, which did not extend to alienation, and that as he could not alienate directly, he could not do so indirectly by creating obligations in favour of other persons. But on

a careful examination of the evidence, their Lordships think that Beaudry was empowered to bind his principal by a contract of alienation. In the letter of November 1865 (Rec., p. 35) Beaudry is directed by David Price to inform the local public of the terms of sales, and Mongraine's letter of May 1870 (Rec., p. 38) shows that this was done by notice at the church door. In the same letter David Price tells Beaudry that certain persons have applied to him for plots, and that he has referred them to Beaudry as his agent. The letter of Mongraine is an appeal to David Price to give him one of the plots on which he had entered and worked, in preference to a rival claimant, and David Price gives no answer except that Beaudry will do what is just. In his letter of 5th September 1870 (Rec., p. 37) David Price instructs Beaudry to insert certain conditions "in all the sales that you effect." In his letter of 21st September 1872, David Price tells Beaudry not to sell land in Range B without taking a specified sum at once, and gives him discretion to make other arrangements, it is not easy to say what, while the lots are unsold. Magnan, the Municipal Secretary and Treasurer, who himself settled on a plot, improved it, and afterwards purchased it, being asked how the Plaintiff proceeded to sell his plots, says that it was through his agent Beaudry. This gentleman's evidence is of much weight as regards the course of business on the estate, because few of the neighbours could write, and he was chosen to write to Beaudry on their behalf. The postscript to Beaudry's letter of 4th August 1876 (Rec., p. 32) is an illustration of what passed between them, and both Magnan (pp. 53, 54) and Beaudry (p. 70) say that communications in the same sense frequently took place. In view of these letters from David Price and Beaudry's action upon them, which must have been known to his

employers, their Lordships have no hesitation in holding that Beaudry had authority to contract for alienation, though it is true that of the powers of attorney executed by the Plaintiff, that which was given to David Price in January 1866 expressly mentions sales, and that given to Beaudry in September 1872 speaks only of general regulation and management. Even if in a question between the Plaintiff and Beaudry, and on a complaint by the former that the latter had exceeded his powers, it should appear that those powers were more limited than appears in this case, it is quite certain that the Plaintiff authorized Beaudry so to act as to lead the public reasonably to conclude that he had power to bind his principals by contracts of alienation, and that both he and intending purchasers dealt in good faith on that footing. In such a case the Plaintiff would fall within the principle expressed in Art. 1730 of the Civil Code, which is a plain principle of justice, and, so far as their Lordships know, is common to all systems of law.

From the foregoing examination of the case it results that whatever obligation would fasten upon Beaudry if he were owner of the land in question, is fastened on the Plaintiff, and that he is bound, upon payment of the proper price, not to disturb but to confirm the Defendant's title. That is a complete answer to the action for possession, and the decree appealed from ought therefore to be affirmed, but with a variation in the ground assigned for it. Their Lordships have felt some doubt what that variation should be. It would probably be more beneficial to the parties if they could fix the exact price to be given for the land in dispute. They do not doubt that it was to be the ruling price at which the other plots in Range B North were selling at the time when Perron began to make his improvements. And if they saw that

the parties had directed evidence to this question, and had produced nothing but what is now in the record, they would come to the conclusion that the price was 1·50 dollar, or 7*s.* 6*d.* per arpent. But though there must be ample evidence on the point, it was not directly in issue, and the witnesses have not been called to speak directly to it. Under the circumstances, their Lordships think it will be best to declare that the Respondent, by the acts of himself and his agent Pierre George Beaudry, has brought himself and still is under an obligation towards the Appellant to confirm his possession and title of and to the plot of land in dispute, upon being paid the price thereof according to the rate at which the Respondent was selling the other plots in Range B North at the time when Marcellin Perron began to make improvements thereon, with interest from the same time, and that on this ground the appeal should be dismissed, and the decree of the Court of Queen's Bench affirmed.

Their Lordships will humbly advise Her Majesty in accordance with the foregoing opinion. As the Respondent has not appeared there will be no order as to costs.