Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Alfred Nelson Laughton v. The Commissioners of Port Erin, from His Majesty's High Court of Justice of the Isle of Man; delivered the 15th July, 1910.

Present at the Hearing:

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SHAW.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The Action which has given rise to this Appeal was brought to enforce specific performance of a contract for the sale of land at Port Erin, in the Isle of Man, for the sum of £2,250.

The contract is dated the 26th of March, 1904. The Appellant, who was the vendor, was Plaintiff. The purchasers, who were Defendants in the Action, are the Commissioners of Port Erin. The land was bought to be used as a pleasure-ground or place of public resort or recreation. The Commissioners have power, with the approval

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of the Tynwald Court, to buy land for that purpose. The requisite sanction was given on the 29th of May, 1906, and thereupon the contract became absolute. It was a condition of the contract that the purchase should be completed within one month after approval by the Tynwald Court.

In the Court of First Instance His Honour the Clerk of the Rolls dismissed the Action, but without costs, and he ordered the Plaintiff to return the deposit of £100 paid on the execution of the contract.

On Appeal to the Staff of Government Division of the High Court, the Judgment of the Court below was reversed, so far as regards the return of the deposit. Otherwise the Appeal was dismissed, and again the dismissal was without costs. From that decision the present Appeal is brought.

Both Courts in the Island refused costs to the Commissioners on account of their conduct. "Plaintiff," said the Clerk of the Rolls, "has been put to a great deal of annoyance, trouble and delay by the Defendants, and, under all the circumstances, he has been hardly treated throughout."

Mr. Frank Russell, who appeared for the Respondents, said everything that could be said on their behalf. But it was impossible either to justify their conduct in trying to shuffle out of a solemn bargain or to suggest any plausible ground of defence to the Plaintiff's claim.

In the argument before this Board two points were presented on behalf of the Respondents. Both were argued with much ingenuity. One had found favour with the Clerk of the Rolls, but was rejected in the High Court. The other was adopted by the learned Deemsters in the Court of Appeal.

His Honour the Clerk of the Rolls came to the conclusion that the Court ought not to enforce the contract because one of the Commissioners present when the agreement was approved had, as he thought, an interest in the success of the proposed improvement scheme. His interest, such as it was, was this. He was his father's eldest son. His father was a neighbouring landowner, and so much interested in having the land laid out as a a pleasure-ground that, in response to an appeal by the Commissioners, he subscribed £500, and agreed besides to contribute some land to widen an adjoining road. The father was in failing health at the time, and the son acted for him in his negotiations with the Commissioners. On that ground it was said that the contract of sale under the seal of the Commissioners was void *ab initio*. And the learned Clerk of the Rolls so held. There was no complaint that the price was extravagant: it was proved to be below the market value of the land. It was not contended that the Commissioner whose conduct is so gravely impeached acted otherwise than openly and *bonâ fide*. It was not suggested that he was pecuniarily or directly interested in the sale. But it was said that he was indirectly "concerned," and it was argued that the word "concerned" which occurs in the Manx Local Government Act, 1886, Section 286, ought to have a very wide meaning. It is not surprising that an argument so far fetched was rejected by the Manx Court of Appeal and made little impression on the Tynwald Court, where it seems to have been put forward at the instance of some of the present Commissioners of Port Erin with the view of inducing the Court to withhold its sanction to the contract.

The other point commended itself to the Court of Appeal. It was this. It was said

that the Appellant had disentitled himself to specific performance because under some provocation he had written two indiscreet letters to the Commissioners, which after the Action was brought they construed as a declaration that, whatever he meant to do, he did not mean to ask for specific performance.

On the 18th of April, 1905, the Appellant wrote to the Commissioners a letter in which he expressed himself as follows :—

> "I would also add that after the expiration of the period named" [? for completion after approval] "by the Tynwald Court I shall not consider myself bound by my agreement with your Board, but shall dispose of the lots, separately or otherwise, as I may think fit."

Of this letter, beyond giving a bare acknowledgment, the Commissioners took no notice.

The other letter on which the Commissioners now rely was dated June 2nd, 1906. It contained the following passage ;—

> "The Commissioners have—most vexatiously—delayed necessary procedure for upwards of two years, whereby I have lost the interest upon the £2,250 for that period. I therefore wish them clearly to understand that I shall not consent to extend the time for settlement, payment of the purchase money, and the laying out of the grounds for one day after the expiration of the said month."

Now, the letter of the 2nd of June, 1906, taken by itself, so far from indicating an intention to determine or avoid the contract seems to insist on its strict performance. But then it was ingeniously argued that it must be read with the letter of the 18th of April, 1905, and that if the two letters, divided in point of time by an interval of more than twelve months, are taken together you can spell out a declaration on the

part of the Appellant that he did not intend to seek specific performance. After such a declaration, it was said the Court was bound to refuse specific performance. In support of that view a case before Kindersley, V.C., was cited as a direct authority on the point. It was the case of *Royou* v. *Paul* (L.J. Chy., xxviii., N.S. 555). That case has no doubt a superficial resemblance to the present. But it has no real bearing upon it. It was a claim for specific performance. On the 5th of November, 1856, the vendor's Solicitors wrote to inform the purchaser's Solicitor that unless he proceeded to complete the purchase within five days they should re-sell the premises. Some months afterwards the vendor brought a Suit for specific performance. The Bill was dismissed with costs. But it was not dismissed because the Plaintiff had disentitled himself to specific performance, but because the purchaser had duly determined the contract. Replying to the vendor's letter of the 5th of November on the very next day the purchaser gave notice that unless his requisitions were complied with within a week he would commence an Action to recover his deposit. The Plaintiff's Solicitors, who had more than once refused to comply with requisitions which the Court held to be reasonable and proper, persisted in their refusal. On the 17th of November the purchaser brought an Action to recover his deposit. The vendor, after some delay, met this move by a Bill for specific performance. The real question was not whether the Plaintiff had put himself out of Court by his conduct, but whether the contract was duly determined by the Defendant's notice. The Vice-Chancellor held that the notice, though short, was sufficient under the circumstances, because, to use his words, "the vendor, from the time of his writing the letter of the 5th of November, seems to have said 'I don't mean to ask you for specific performance.'"

Their Lordships are of opinion that the Order under Appeal and the Judgment of the Clerk of the Rolls must be discharged with costs, to be paid by the Respondents to the Appellant, and that the Respondents ought to be ordered specifically to perform the agreement of the 26th of March, 1904. The Action must be remitted to the High Court of Justice of the Isle of Man, Chancery Division, to enforce the contract.

The deposit must be taken as part payment of the purchase money.

Their Lordships will therefore humbly advise His Majesty accordingly.

The Respondents will pay the costs of the Appeal.

Their Lordships cannot part with the Case without expressing their regret that a public body should have considered it right to take a course which must subject the ratepayers to a heavy burden by resisting a just demand which no private individual in a similar case would have thought of repudiating.

In the Privy Council.

ALFRED NELSON LAUGHTON

v.

THE COMMISSIONERS OF PORT ERIN.

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