

[HIGH COURT OF AUSTRALIA.]

TURNER APPELLANT;
DEFENDANT,

AND

EGGLETON RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A. *Contract—Construction—Purchase and sale of land—Agreement to act in conjunction—Employer and employee—Termination of employment—Provision as to future undertakings—Share in profits.*
1915.

SYDNEY,
April 13, 14.
Griffith C.J.,
Isaacs and
Gavan Duffy JJ.

In an agreement under which the plaintiff and the defendant were conjointly to buy and sell land, it was stipulated that the plaintiff's position was to be clearly defined as an employee, and in the event of his leaving the defendant's employ or being dismissed therefrom he was to have no claim on any of the defendant's future undertakings, and in that case the plaintiff's share of the various estates he might be interested in were to be paid him as the profits should come in. The plaintiff was dismissed.

Held, that under the agreement the plaintiff was entitled to a share in the profits derived from the sale of land which, though purchased conjointly before his dismissal, was not sold until after his dismissal.

Decision of the Supreme Court of New South Wales (*Simpson C.J.* in Eq.) affirmed.

APPEAL from the Supreme Court of New South Wales.

Frederick Anthony Eggleton brought a suit in the equitable jurisdiction of the Supreme Court against Charles James Turner upon an agreement entered into by and between them with respect to buying and selling land. The suit was tried by *Simpson C.J.* in Eq., who gave judgment for the plaintiff.

From that decision the defendant now appealed to the High Court. H. C. OF A.
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The nature of the suit and the facts sufficiently appear in the judgments hereunder.

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Loxton K.C. and *W. A. Palmer*, for the appellant.

Knox K.C. and *Davidson*, for the respondent.

GRIFFITH C.J. The only question in this case is as to the construction of a letter of 2nd November 1909. It was proposed that the plaintiff and the defendant should enter into a series of adventures with respect to the purchase and subdivision of land. The letter stated the terms on which the plaintiff was willing to enter into these adventures. The first stipulation was "My position to be clearly defined as an employee and in the event of my leaving your employ or your dismissing me I am to have no claim on any of your future undertakings and in that case my share of the various estates I may be interested in to be paid me as the profits come in." With respect to his remuneration it was stipulated that payment was "in all cases where the purchase money for a property does not exceed £500 and we succeed in raising a loan of sufficient money to pay for the same and place it on the market, an equal division of the profits gained to be made. In other words where no money is required for purchase up to £500 I am the possessor of a half share in the venture." Then followed stipulations as to his remuneration in other cases. It was also stipulated that "I be permitted to draw say £3 a week against my interest in the various estates, such amounts to be debited to my account." Then his duties were enumerated: "My duties to consist among others of the inspections, valuations and recommendations generally in regard to the various estates, booklet-writing, plan-producing, posting and general distribution of advertising matter. Also, in addition, the arrangements and supervision of all clearing and road making and general management of outdoor auction sales of land in subdivision." Having regard to all these stipulations, the meaning of the stipulation with respect to what was to happen if the plaintiff left the

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defendant's employment or was dismissed—namely, that he was to have no claim with respect to future undertakings—is quite free from doubt. He had no right to be admitted into future adventures, but as to adventures already undertaken he was to receive his share of the profits as they subsequently came in. The expression “share in the venture” means, therefore, share in the profits realized upon the sale of any estate already acquired and awaiting disposal. This share was to be paid “as profits came in,” indicating clearly that he was to be taken to have a share in those profits of which he was not to be deprived, but that payment was to be postponed till the profits come in. Mr. *Loxton* contends that the remuneration, although calculated on the basis of future profit, was really commission, none of which was earned in respect of any adventure until the whole of that adventure was concluded. This is merely a matter of construction, and as a matter of construction I think it is clear from the terms of the agreement that this contention is unfounded. If the defendant suffered any loss by the misconduct of the plaintiff or his failure to render the stipulated services, he would be entitled to recover damages for it; but no such case was set up here. Mr. *Knox* very fairly agreed that the declaration should be formally varied by a declaration that any expenses incurred by the defendant after 7th July 1913 in respect of any work or services which it would have been the plaintiff's duty to perform or render, if still in the defendant's employment, shall be debited to his share. With this variation the appeal should be dismissed with costs.

ISAACS J. I agree. I say for myself I have rarely seen a clearer document than this. Two men entered into a business arrangement by which they should in conjunction purchase and sell land. Whether they were acting as partners or as employer and employee is immaterial because they expressly said what was to happen in the very event which has occurred. The letter says:—“My position to be clearly defined as an employee and in the event of my leaving your employ or your dismissing me I am to have no claim on any of your future undertakings and in that case my share of the various estates I may be interested in to be paid me as the profits come in.” Now, no time was fixed for the

operation of this arrangement, and it cannot be said that dismissal before a specified date is improper. It is contended that dismissal means dismissal for valid cause; if so, what is to happen then is prescribed by the agreement. The employee is to have no claim on any of the future undertakings—"my share of the various estates I may be interested in to be paid me as the profits come in." Future undertakings must be contrasted with present undertakings, and the terms of remuneration show what interests in the various estates the employee is to have. It is quite plain that the interest commences from the very moment of purchase, and the parties then know what their interests are. It is idle to say what, apart from the express provisions of the contract, would be the fair thing to do, or to talk of the doctrine laid down in *Cutter v. Powell* (1). The parties have distinctly stated what their relations are in the events that have happened. The appeal is absolutely hopeless.

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—
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GAVAN DUFFY J. I agree.

*Appeal dismissed with costs. Judgment
appealed from varied as stated in the
judgment of Griffith C.J.*

Solicitors, for the appellant, *Turner, Teece & Co.*

Solicitor, for the respondent, *F. C. Petrie.*

D. G. D.

(1) 6 T.R., 320.