

to the defendant and half to Bunker, and "in the event of Silver finding anything of sufficient value for Mr. Bunker to finance or acquire by purchase or otherwise, Mr. Bunker agrees to give Silver a 25 per cent. interest clear as his share in this agreement."

A claim was located, and the defendant entered into negotiation for the sale of it to the plaintiffs, and on the same day he entered into a further agreement with Bunker as follows:—

"Toronto, Dec. 4th, 1908. Whereas L. P. Silver and C. H. Bunker entered into a certain agreement dated October 15th, 1908, at Cobalt, Ont., and whereas certain claims were located, described as Nos. 1629 and 1630 in Gowganda district: now this agreement . . . witnesseth that said C. H. Bunker has sold to said L. P. Silver his interest in said claims, and said Silver has bought the interest of said Bunker for the agreed sum of \$4,000. \$1,000 has been paid by Silver to Bunker, receipt whereof is hereby acknowledged by Bunker; and Silver agrees to deposit to the credit of Bunker at the Traders Bank of Canada, Toronto, within 30 days from the date hereof, the balance of \$3,000. This payment to be made at earlier date if sale is made by Silver, otherwise not binding on said Silver. This last clause refers to the fact that Silver has made agreement this date to sell three-fourths interest in the property. No obligation is on Silver to complete payment to Bunker, unless said sale goes through and payments are made to Silver, in which event the \$1,000 paid is forfeited and no contract exists for sale by Bunker to Silver. C. H. Bunker. L. P. Silver."

The sale was then completed with the plaintiffs. By this action the plaintiffs sought to cancel that sale, on the ground of fraud and misrepresentation. The defendant, Silver, sought to bring Bunker before the Court as a third party, alleging that he was a partner. The plaintiffs did not pretend that Bunker made any misrepresentation or had anything to do with the sale to them, nor did it appear that they even knew him in the transaction.

W. H. McGuire, for Bunker, the appellant.

E. P. Brown, for the defendant.

CLUTE, J. (after setting out the facts as above):—Whatever the relation between Silver and Bunker was prior to the 4th December, 1908, I think it clear that no partnership existed between them after the execution of the agreement above set forth. It is a sale of Bunker's interest in the claim, and nothing more. Why he should be made a party to an action charging fraud as against Silver, I cannot understand. Silver was the one man who had knowledge of the facts; Bunker knew nothing about the