

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

APRIL 6TH, 1914.

BELL v. COLERIDGE.

6 O. W. N. 200.

*Principal and Agent—Secret Profit—Purchase of Lands—Evidence—
Fraud—Account—Counterclaim — Variation of Judgment—De-
claration of Partnership — Contingent Order for Dissolution—
Costs.*

LATCHFORD, J., *held* (25 O. W. R. 575) that an agent who purchased certain lands from a syndicate at \$400 per acre and resold them to his principals at \$450 per acre representing to the latter that \$450 per acre was the true purchase price was liable for the secret profit so made by him.

SUP. CT. ONT. (1st App. Div.) *held*, that the judgment in appeal should be varied by declaring that plaintiff, defendant and a third party, not a party to the action were partners in respect of the transaction in question and that such partnership was entitled to the profits wrongfully made by the appellant.

Appeal by defendant Coleridge from judgment of HON. MR. JUSTICE LATCHFORD, 25 O. W. R. 575.

M. Wilson, K.C., for defendant, Coleridge, appellant.

D. L. McCarthy, K.C., for plaintiff, respondent.

HON. MR. JUSTICE HODGINS:—The respondent says that the appellant "said we might buy it (the Pratt farm) for \$450 an acre and that it was a good buy at that price and that he and Dr. Smith would go into partnership with me. I do not say that he literally put it in these words, but that was the understanding, we were all to be in it together. Up to that time, he says, he had never heard of the Pratt farm. He further says the appellant told him "that the price would be \$450 an acre." He understood a syndicate owned it. Further on this occurs:

"Q. As being partners, can you tell his Lordship or give his Lordship any idea when that discussion took place in reference to the Pratt farm? A. There was a series of talks but that started about the 6th May."

In cross-examination he adds: "Naturally I judge that Dr. Coleridge started it, to talk to me about the Pratt farm as soon as he heard of it, so I simply took it approximately at that date," i.e., the 6th May. . . . "It is purely a