

FERGUSON, J. A., reading the judgment of the Court, said that it was conceded on the argument that the appeal from the part of the judgment which dismissed the action must be dismissed. The argument was therefore restricted to the counterclaim. The defendants by their counterclaim alleged that the plaintiff, acting as agent for a syndicate of which they were members, sold 85,556 shares of the capital stock of the (Canadian) Tough Oakes Gold Mines Limited to the Kirkland Lake company for 10 shillings per share, or \$207,986.65, and that he received that sum for the syndicate, but by misrepresentation led the syndicate to believe that he had sold to the Kirkland Lake company 95,556 shares at \$2 per share, or \$191,112, and accounted for the smaller sum only, whereas he should have paid over the greater amount and should have returned the extra 10,000 shares as unsold; and that, therefore, he had, at the time of the trial, in his hands and unaccounted for, \$16,786.65 in money and 10,000 shares, the property of the syndicate; and that the defendant Oakes, as owner of 8 1-3 per cent. of the syndicate shares, and the defendant Robins, as owner of 5 per cent., were entitled to those proportions of the money and shares so held by Foster and not accounted for.

Foster's contentions that, before making the purchase, he disclosed to the defendants the fact that he intended to be a purchaser, and that they agreed to his purchasing 95,556 shares at \$2 per share, or that they subsequently, with full knowledge of the facts, ratified, adopted, or confirmed such a purchase, were not supported by the evidence. But, even assuming as correct Foster's statement that the defendants agreed or intended that Foster should himself be a purchaser, and that he did purchase, the same result must be arrived at. He set up and sought to maintain against his principals a purchase by himself of property which his principals had entrusted to him for sale. In such circumstances, the burden was on him to prove that the transaction was entered into in good faith, after full and fair disclosure of all material circumstances and of everything known to him respecting the subject-matter of the contract, which would be likely to influence the conduct of his principals, and particularly that he himself was the purchaser or interested in the purchase; and, if there had not been such disclosure, or if there had been any underhand dealing or deceit, such a transaction could not stand: *McPherson v. Watt* (1877), 3 App. Cas. 254, 266; *Dunne v. English* (1874), L.R. 18 Eq. 524, 534; *Bowstead on Agency*, 6th ed., p. 134; *Seton on Decrees*, 4th ed., pp. 790, 1360.

It was, upon the evidence and findings, clear that Foster did not make the required disclosures, either before or after the alleged purchase; from which it followed that the defendants, if they so elected, were entitled to have the purchase of such of the shares as