

JUNE 15TH, 1915.

BELL v. SMITH.

Partnership—Purchase of Farm by Syndicate—Profits Received by two Members—Concealment and Misrepresentation—Lien—Sale of Property—Dissolution of Partnership—Account—Parties—Costs—Forfeiture.

Appeal by the defendants Smith and Coleridge from the judgment of LENNOX, J., ante 49.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

J. H. Rodd, for the appellant Smith.

F. D. Davis, for the appellant Coleridge.

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

LATCHFORD, J., read a judgment in which he discussed the evidence and the findings of the trial Judge. He concluded by saying that the evidence established that, in the purchase of the land in question from the Morton syndicate, as well as in the sale to the plaintiff, the defendant Coleridge was the agent as well as partner of the defendant Smith. The evidence so connected Smith with Coleridge that the judgment against Coleridge in the former action (Bell v. Coleridge (1913-14), 5 O.W.N. 655, 6 O.W.N. 200) became in effect a judgment against Smith. Smith was answerable for the misrepresentation by which his agent and co-partner obtained \$3,750 from the plaintiff. It was a hardship that the plaintiff must recognise as his partners in the ownership of the farm, two persons who had not paid a dollar towards the purchase-price except what they wrongfully procured from him; but there was no cross-appeal from the declaration that the rights of these defendants had not been forfeited. The plaintiff was not insisting on judgment and execution against Smith and Coleridge for the \$3,750, but was content to have that amount, with interest, charged against them as a lien on the property on the taking of the partnership accounts. To that extent the judgment must be varied: otherwise it should be affirmed, and the appeal dismissed with costs.

FALCONBRIDGE, C.J.K.B., and RIDDELL and KELLY, JJ., agreed in the result.

Judgment varied.