

costs; otherwise the appeal will be allowed and a new trial directed, the costs of the last trial and in the Divisional Court to be costs in the cause to the successful party; the costs of the appeal to be to the defendant in any event.

MOSS, C.J.O., MACLAREN and MAGEE, JJ.A., concurred.

MEREDITH, J.A., also agreed, for reasons stated in writing; but was of opinion that the new trial should be merely a new assessment of damages.

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DECEMBER 5TH, 1910.

CLISDELL v. LOVELL.

*Vendor and Purchaser—Contract for Sale of Business Property—Sale to Syndicate—Subsequent Sale to Another Person—Rights and Duties of Members of Syndicate—Fraud—Trustee—Agent—Damages for Breach of Duty—Costs.*

Appeal by the plaintiffs and the defendant Millar from the judgment of a Divisional Court, 1 O.W.N. 648, allowing the appeal of the two defendants, George A. Case and G. A. Case Limited from the judgment of RIDDELL, J., 13 O.W.R. 748.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

I. F. Hellmuth, K.C., for the appellants.

H. Cassels, K.C., and R. S. Cassels, K.C., for the defendants George A. Case and G. A. Case Limited.

MACLAREN, J.A.:—Clisdell and Orpen, the plaintiffs, the defendant Millar, and the defendant G. A. Case Limited, were the members of a syndicate formed to purchase the Dominion Brewery at Toronto, George A. Case being the agent and representative of G. A. Case Limited throughout the transaction.

The trial Judge dismissed the plaintiffs' action as against the other defendants, who were the vendors and purchasers of the brewery, but awarded damages against G. A. Case Limited for breach of its duty as a member of the syndicate to the