

the time the alleged sale was made to the American Good Roads Machinery Co., interested in and stockholders therein, of which the plaintiff was aware. 4. The negotiations for the sale were carried on with W., an officer and promoter of the American company, acting, as the plaintiff knew, as a trustee for that company. 5. The plaintiff, for the purposes of the sale, entered into a secret fraudulent agreement with W., whereby, in consideration of W. assisting the plaintiff in making the sale to the company, the plaintiff agreed to pay W. one-half of the commission. 6. The defendants and the American company were not aware of the secret agreement nor that W. was to receive a portion of the commission. 7. The plaintiff and W. in negotiating the sale agreed to pay \$1,000 more for the property than it could have been purchased for, thereby causing the company and the defendants a loss of that sum. 8. In any event, the plaintiff cannot recover the one-half of the commission agreed to be paid to W., as, owing to the fraudulent agreement and breach of trust, that amount is the property of the American company and the defendants. 9. The agreement was a fraud on the "parties" referred to, and the plaintiff is, therefore, disentitled to recover anything by way of commission. The Master referred to *Murray v. Epsom*, [1897] 1 Ch. 35. *Millington v. Loring*, 6 Q. B. D. 190; *Stratford Gas Co. v. Gordon*, 14 P. R. 405; and said that the real issue was as to the right of the plaintiff to recover for his services in bringing about the sale; and the defence was that he had disentitled himself to any remuneration. The paragraphs attacked, except the 8th, set out the facts on which the defendants would rely at the trial to defeat the plaintiff's claim. The 8th paragraph was irrelevant, because it was no concern of the defendants what division or other disposition might be made of the commission, if the plaintiff was entitled to it; and it asked relief which could not be had in W.'s absence. Order made striking out paragraph 8. Motion dismissed as regards the other paragraphs. Costs in the cause. F. Erichsen Brown, for the plaintiff. W. Proudfoot, K.C., for the defendants.