

to cite the observation of Lord Justice Bowen in *Boston Deep Sea Fishing Co. v. Ansell* (1888), 39 Ch.D. at p. 362; "There never, therefore, was a time in the history of our law when it was more essential that Courts of justice should draw with precision and firmness the line of demarcation which prevails between commissions which may be honestly received and kept, and commissions taken behind the master's back and in fraud of the master."

My judgment is, that the appellant is entitled to rescission of the contract. I am quite unable to understand the argument that the appellant, with knowledge, ratified the transaction by his solicitor's letter of the 4th October, 1910. . . .

It follows that the appellant is entitled to repayment of the \$20,000 paid on the 12th April, 1910. This includes the \$2,000 which the appellant could claim as an alternative. The pleadings should be amended, if necessary, as asked at the trial. The appellant should, at his own expense, have the mechanics' liens discharged; and I think, in view of some evidence given, that the cost of cementing and fencing the shaft should also be borne by him, and the ore handed over to the respondents.

All parties seem to agree that the property is a good mining property and valuable; and, except as indicated above, no damage has been occasioned. But, in any event, nothing has been done, save that permitted by the contract of sale, and the circumstances shew that the parties can be put back in their original positions.

The respondents should pay the costs of the action and counterclaim. The appeal should be allowed, and the action should be dismissed.

GARROW, MACLAREN, and MAGEE, J.J.A., concurred.

MEREDITH, J.A., dissented, for reasons stated in writing. He was of opinion that, assuming that all that the appellant contended for was right, in fact and in law, the appeal must fail because the respondent had no knowledge of any partnership, or of any kind of fiduciary relationship, between the appellant and his co-defendant Sykes in the transaction in question; and the appellant's contention could hardly have gone, and did not go, so far as to charge fraud without knowledge. The want of proof of a partnership was also fatal to the appeal.

Appeal allowed; MEREDITH, J.A., dissenting.