

original application, the Master was not sure that it would have been granted *ex parte*; and, for that reason, there should be no costs of this motion. T. J. Blain, for the residuary legatees. H. S. White, for the solicitor.

HITCHCOCK v. SYKES—FALCONBRIDGE, C.J.K.B.—SEPT. 13.

Vendor and Purchaser—Contract for Sale of Mining Lands—Default—Delivery up of Possession Free from Incumbrances—Mechanics' Liens—Discharge—Fraud—Reference.]—An action by the vendors for the specific performance of a contract for the sale of certain mining lands, for payment of \$20,000, the first instalment of the purchase-money; or, in the alternative, for possession and damages for breach of the contract. The Chief Justice said that it was most likely that, as between the defendant Webster and the defendant Sykes, his friend, co-worker in church matters, and co-adventurer in this enterprise, a fraud was practised by Sykes by the suppression of the fact that Sykes was getting a commission on the purchase-money; and it might be that Webster did not discover this until some months after the agreement. But the evidence did not satisfy the Chief Justice that the plaintiffs, or any of them, were parties to the fraud—if fraud there was—or practised or attempted to practise any concealment. There was much that took place on the 12th April which might have directed Webster's attention to what was going on, and which did not seem consistent with any desire on the part of the plaintiffs to cover anything up. As to this, the defence and counterclaim fail. It may be that, having regard to the condition of the title, no re-conveyance of the lands or rights therein by the defendants is necessary; but the defendants have failed to put the plaintiffs in possession of the lands and premises free from all incumbrances—in the Recorder's office and in fact—in law as well as in morals. It does not appear that the plaintiffs have received any benefit or the full benefit of the work done in respect of which the liens were filed. There is evidence that the methods pursued were a positive eventual disadvantage to the property. All the other matters are the subject of a reference. Judgment for the plaintiffs with the costs of action and counterclaim. Further directions and subsequent costs reserved until after the Master's report. C. H. Cline, for the plaintiffs. G. H. Kilmer, K.C., for the defendant Webster.