

## SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

DECEMBER 10TH, 1913.

## CRICHTON v. EWYER.

*Brokers—Agreement for 20 per cent. Commission—Sales of Mining Properties — Commission Payable only in Respect of Property Owned by Defendants at Time of Contract.*

Appeal by the plaintiffs from a judgment of HON. MR. JUSTICE MIDDLETON, pronounced 10th October, 1913.

Action by plaintiffs, mining brokers, under an alleged agreement for a 20 per cent. commission upon all sales of mining properties made by defendants through persons introduced or sent to them by plaintiffs.

HON. MR. JUSTICE MIDDLETON, at trial, dismissed the action with costs.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J. EX. HON. MR. JUSTICE LATCHFORD, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH, on 10th December, 1913.

D. O. Cameron, for the plaintiffs, appellants.

R. McKay, K.C., and W. J. Clark, for the defendants, respondents.

Their Lordships' judgment was delivered by

HON. SIR WM. MULOCK, C.J. EX. (v.v.).—In this case we are of opinion that we should not disturb the judgment entered by Hon. Mr. Justice Middleton, dismissing the plaintiff's action.

It is a pure question of fact, and the evidence shews that the commission was to be payable only in respect of the property owned by the defendants at the time of the contract.

The plaintiff cannot complain because of that view being taken of the evidence, as he has so sworn himself.