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HITCHCOCK v. SYKES.

[March 23.]

*Vendor and purchaser—Agreement for sale—Agent to procure purchaser—Agent joining in purchase—Non-disclosure to co-purchaser—Payment of commission—Rescission of contract.*

H. was owner of mining land and S. was offered a commission of ten per cent. for finding a purchaser therefor. S. induced W. to take up the matter and joined him in the purchase without disclosing his agency. A contract was entered into with H. and W. paid \$20,000 on account of the purchase price on which S. was paid his commission. Default having been made in the further payments H. brought action claiming possession of the property and the right to retain the amount paid. W. counter-claimed for rescission of the contract and return of the money paid with interest and on the trial swore that he knew nothing of S.'s agency for several months after the contract was signed.

*Held*, affirming the judgment of the Appellate Division (29 O.L.R. 6), Fitzpatrick C.J., dissenting, that it was the duty of H., on becoming aware that S. was a co-purchaser with W., to satisfy himself that the latter was aware of the agency of S.; that H. was responsible for the fraudulent misrepresentation of their agent; and that W. was entitled to the relief asked by his counter-claim.

Appeal dismissed with costs.

*Cline*, for the appellants. *Kilner*, for the respondents.

## Province of Ontario

### SUPREME COURT.

Middleton, J.]

[15 D.L.R. 684.]

PEDLAR v. TORONTO POWER CO.

1. *Damages—Measure of compensation—Death—Claim by parent—Lord Campbell's Act.*

The basis for the recovery of damages under Lord Campbell's Act for death caused by negligence is not for injured feelings or on the ground of sentiment but compensation for a pecuniary loss; the parent's claim in respect of the death of a child of tender years must be based upon a reasonable expectation of pecuniary benefit.