

RIDDELL, J., dissented, for reasons stated in writing. He said, inter alia, that the complaint was not that the rifle cartridges sold were defective, but that one was not a rifle cartridge at all. In every sale there is a condition precedent that the article sold shall answer the description, and this condition becomes a warranty when the goods have been dealt with as the purchaser's own: *Behn v. Burness*, 3 B. & S. 751; *New Hamburg Manufacturing Co. v. Webb* (1911), 23 O.L.R. 44. In the present case, a revolver cartridge was sold for a rifle cartridge; and it made no difference whether the vendors knew the fact or not—they were liable as for an implied warranty that it was a rifle cartridge. He was also of opinion that the damages were not too remote; and that the appeal should be allowed with costs and judgment entered for the plaintiff for \$500 and costs.

LEITCH, J., agreed with RIDDELL, J.

*Appeal dismissed; RIDDELL and LEITCH, JJ.,
dissenting.*

MARCH 18TH, 1913.

MILLER v. HAND.

Principal and Agent—Sale of Land by Agent to Nominal Purchaser—Resale at Profit—Secret Profit Derived by Agent—Measure of Damages—Partnership—Claim of Partner.

Appeal by the defendant from the judgment of BRITTON, J., ante 245.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and LEITCH, JJ.

G. H. Watson, K.C., for the defendant.

G. H. Kilmer, K.C., for the plaintiff.

The judgment of the Court was delivered by MULOCK, C.J.:—We are of opinion that this judgment cannot be disturbed. The learned trial Judge has found that the defendant was an agent of the plaintiff merely for the sale of lot 35, and continued as his agent throughout, until the sale was completed; and he was paid for his agency a certain stipulated sum of money.

During the whole of the period, from the time of Hand's appointment until the completion of the sale, the finding of the