

in the purchase in the name of Philip, the plaintiff having entered into the contract by mistake and in ignorance caused by the defendants' fraud, deceit, and breach of duty. The plaintiff claimed judgment for \$17,455.49 and interest, damages against the defendants R. B. Rice & Sons and Tolton for breach of duty to the plaintiff as his agents, and to recover \$562 paid to the defendants R. B. Rice & Sons as a commission.

The action was tried without a jury at Toronto.

W. N. Tilley, K.C., for the plaintiff.

W. H. Irving, for the defendants.

SUTHERLAND, J., after setting out the facts in a written opinion, found, upon the evidence, that Rice, whose firm was the agent of the plaintiff for the sale of the lots in a subdivision, proposed and advised a sale to an undisclosed purchaser at a price less than that previously fixed by the plaintiff, and on terms of payment less advantageous to the plaintiff; that the plaintiff agreed to sell 20 lots at a price of \$46 a foot; and that thereupon a contract of purchase was executed under seal by the defendant Philip for the purchase of the 20 lots at the price named, and upon terms of payment easier than those stipulated for in previous contracts; that Rice failed to disclose that he or his firm was interested in the purchase; and that the plaintiff would not have made the reduction in price had he known the facts. The learned Judge also found that the allegations of the plaintiff in regard to the conduct of R. B. Rice & Sons as his agents had been substantially proved; and that the defendant Tolton was not an agent of the plaintiff, but was an undisclosed principal of Philip; that Philip is a man of no means; that the defendants R. B. Rice & Sons, by violation of their duty to the plaintiff, occasioned loss to him for which they were responsible; and that the plaintiff could have sold the land at a better price.

Discussing the law applicable, the learned Judge said that it is well-established that "no principal may sue or be sued on any deed . . . unless he is described as a party thereto and it is executed in his name:" Bowstead's Law of Agency, 5th ed. (1912), p. 311; Halsbury's Laws of England, vol. 1, p. 208, para. 442. Philip was the agent or representative in the transaction of R. B. Rice & Sons and Tolton, and the contract was under seal; but it was argued that, as it did not require to be under seal, the plaintiff was not precluded from having a judgment against the undisclosed principals: Mechem on Agency, 2nd