

The cases most similar in their facts to this case are *Beck v. Kantorowicz*, 3 K. & J. 230; *Lands Allotment Co. v. Broad* (1895), 13 R. 699, 2 Manson B.C. 470; and *Grant v. Gold Exploration and Development Syndicate Limited*, [1900] 1 Q.B. 232. . . .

[References to and quotations from the judgments in these cases.]

These cases, which, to my mind, cover the extreme right which the appellant contends for, have to be applied with care. No doubt, the respondents here were unaware, until Sykes telephoned the day before, that he had found a purchaser, nor did they realise, until the day the contract was signed, that Sykes himself was interested as a partner with that purchaser. It was perhaps a difficult situation; the loss of the sale was the probable price of candour; but the whole evidence—which I have read more than once—leaves no doubt on my mind that the respondents deliberately refrained from saying anything directly, while salving their conscience with the reflection that it could not be said that they had actively misled the appellant. Hence their pretence, as it seems to me, that enough was said, if he had heard it, to put the appellant upon inquiry—a suggestion which, when analysed, is not backed up by any direct evidence that the vital thing, a commission, was named in so many words.

There is more difficulty in determining the question of whether Sykes was an agent of the appellant or of the partnership formed on the 7th April, 1910, and whether Sykes was put in such a position that his interest and duty conflicted.

In answering the first of these questions, it is obvious that the agreement of the 7th April, 1910, contemplated more than a mere co-ownership. It formed a partnership; and, on the face of it, imposed a joint duty on each of the parties to seek to acquire the whole property at the lowest figure, notwithstanding that a price had been named for part of it. Sykes had the experience, and the appellant had the money; and the latter relied both on that experience and on the knowledge of the property and of its owners which Sykes had then acquired through his trip to Cobalt. If Sykes, without any contract at all, had agreed to assist the appellant to acquire the property for himself and to get it at the lowest price and on the best terms possible, he would have been Webster's agent beyond doubt; and I cannot see how the agreement alters this position, except that technically he might have to be considered as the agent of the partnership, instead of the agent of Webster