

claim as upon a quantum meruit. The action was for the recovery of commission on a sale of mining lands. Plaintiffs claimed a commission at the rate of 10 per cent. on a sale for \$250,000.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, J.J.A., and RIDDELL, J.

E. F. B. Johnston, K.C., for defendants.

J. Shilton, for plaintiffs.

MOSS, C. J. O.:— . . . The employment of plaintiffs to find a purchaser was not questioned. The Chancellor found that there was an introduction to defendants, through the instrumentality of plaintiffs, of a person named Hanson, with whom defendants entered into an agreement in writing for the purchase by him of the lands in question, known as the Cross Lake property, for the price or sum of \$250,000, upon certain terms as to payment set forth in the agreement; and this is not now disputed. But plaintiffs allege that defendants agreed to pay them commission at the rate of 10 per cent. upon the amount of the purchase price, and they contend that they earned and are entitled to be paid that sum. Defendants, on the contrary, contend that the bargain was that they were to pay plaintiffs 5 per cent. commission on all moneys as and when received on account of the purchase price; that plaintiffs procured Hanson on that basis; and that the sum of \$30,000 only was received by defendants on account of the Hanson purchase, he having made default and abandoned the transaction, and the property having been subsequently sold to others. The Chancellor agreed with this contention. He held that the only bargain that he could find proved was that defendants would give 5 per cent. commission to be paid as the purchase money came in; and, as regarded the transaction with Hanson, that there was a complete break in it after the receipt by defendants of \$30,000, and a new bargain and sale of the property, with which Hanson had nothing to do, and in respect of which, therefore, plaintiffs were not entitled to a commission. And on these grounds—substantially—he awarded plaintiffs 5 per cent. on the sum of \$30,000.

The Divisional Court, without determining any of the questions between the parties, were of opinion that there ought, in the interests of justice, to be a new trial. They