

NOVEMBER 10TH, 1913.

BLACKIE v. SENECA SUPERIOR SILVER MINES  
LIMITED.

*Principal and Agent—Agent's Commission on Sale of Shares—  
Agreement—Limitation to Shares Sold to one Person—Evi-  
dence—Pleading—Payment into Court—Costs.*

Appeal by the defendant company from the judgment of LATCHFORD, J., in favour of the plaintiff, for the recovery of \$1,238.75, and \$10 paid into Court by the defendant company, and costs, in an action by a mining broker to recover \$6,600, alleged to be the balance due to him by the defendant company as commission or remuneration for selling shares of the capital stock of the defendant company.

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

R. S. Robertson, for the appellant company.

J. W. Mahon, for the plaintiff.

The judgment of the Court was delivered by SUTHERLAND, J.:—The defendant company has a capital stock of \$500,000, divided into 500,000 shares, of the par value of \$1 per share. In the autumn of 1911, the company was in financial straits, and it was necessary to raise money in some way for development purposes, or otherwise it would be liable to lose certain rights under a lease. It was thought best to try to sell some of the stock of the company, and a written arrangement was entered into with the plaintiff on the 15th November, whereby, if he sold stock at a fixed price of 30 cents a share, he would be paid a commission of 15 per cent., on the stock being paid for. He apparently never sold any shares under that agreement. Nevertheless, he says: "I am claiming under that agreement, with the exception of the modification under which I am taking 5 per cent." He explains this by saying that, by a subsequent verbal arrangement made with the company, he agreed to reduce his commission to 5 per cent. upon all shares of the capital stock sold as a result of his efforts, the defendant company at the same time agreeing to reduce the selling price of shares to 17½ cents. He also says that, in negotiating with people at Rochester, N.Y., for the sale of stock, he was told by them that