

claim except what Silver told him. If Silver saw fit to purchase Bunker's interest and sell the same under a fraudulent misrepresentation, I think it clear that Bunker, having no interest and being no party to such misrepresentation, ought not to be affected by it.

It is true that in the memorandum following the agreement the payment to Bunker depended upon the sale by Silver. . . . This, I think, further clearly indicates that it was a sale by Silver, and not a partnership transaction. The \$1,000 is forfeited; but, as a matter of fact, the sale did go through, and the payment was made by Silver, as the receipt of the 4th January shews. . . .

[Reference to McLaren v. Marks, 10 P. R. 451, distinguishing it.]

In the present case, on the facts so far as disclosed by the defendant, no right of action is claimed on the part of the plaintiffs against Bunker. He is not known in the transaction. Upon the document produced, there was, in my judgment, a sale by Bunker to Silver, and at the time the sale to the plaintiffs was made no partnership existed between Silver and Bunker.

I can see no ground for bringing Bunker in as a third party. See Thomas v. Atherton, 10 Ch. D. 185; Merryweather v. Nixan, 8 T. R. 186; Johnson v. Wild, 44 Ch. D. 146; Payne v. Coughell, 17 P. R. 39; Windsor Fair Grounds and Driving Park Association v. Highland Park Club, 19 P. R. 130; Miller v. Sarnia Gas and Electric Co., 2 O. L. R. 546.

The appeal should be allowed and the orders of the Master set aside with costs here and below.

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LATCHFORD, J.

JANUARY 31ST, 1910.

#### RE BECKSTED.

##### *Will—Construction—Devise—Vested or Contingent Estate.*

Application by Martha Isadora Becksted, the widow and one of the executors of Elijah Becksted, for an order determining her interest and the interest, if any, of the next of kin of the deceased, in part of lot 15 in the 7th concession of Williamsburgh.

D. B. MacLennan, K.C., for the executors.

J. A. Hutcheson, K.C., for Elizabeth McKnight, one of the next of kin.

LATCHFORD, J.:—Elijah Becksted died on the 25th October, 1895. His will was made a short time previously. It was proved