

HON. MR. JUSTICE BRITTON.

NOVEMBER 8TH, 1912.

TRIAL.

## MILLER v. HAND.

4 O. W. N. 245.

*Principal and Agent—Secret Profits—Purchase by Agent—Measure of Damages.*

Action for an account of the secret profits made by defendant while acting as agent for plaintiff for the sale of certain lands. Defendant had purported to sell them to one McDougall at \$100 per foot, but in reality purchased them himself and, a few months later, sold them for \$160 per foot.

BRITTON, J., *held*, that plaintiff was entitled to treat the later sale as made on his account, and that he was, therefore, entitled to all profits thereof, less proper deductions.

Judgment for plaintiff with costs.

Action for an account of the secret profits made by defendant while acting as agent for plaintiff, tried at Sault Ste. Marie without a jury.

Geo. H. Kilmer, K.C., for the plaintiff.

J. E. Irving, K.C., for the defendant.

HON. MR. JUSTICE BRITTON:—The plaintiff was the registered owner of the west half of original lot 35 on the north side of Queen street in the city of Sault Ste. Marie, having a frontage on Queen street of 55 feet. The defendant was well known to the plaintiff as a dealer in real estate and as an agent for the purchase and sale of real estate in the city of Sault Ste. Marie. The plaintiff employed the defendant to act for him in the sale of above lot.

The defendant accepted such employment and in due course represented to the plaintiff that he had found a purchaser for said lot, namely, one Neil McDougall, who as the defendant said, was willing to purchase and pay at the price of \$100 per foot frontage. The sale was carried out with McDougall at that price, viz., \$5,500, and the usual commission for such a sale at Sault Ste. Marie was:

5% on 1st \$1,000 .....	\$ 50 00
2½% on balance of \$4,500 .....	112 50

In all the sum of .....\$162 50