

SECOND DIVISIONAL COURT.

FEBRUARY 1ST, 1918.

KIDD v. NATIONAL RAILWAY ASSOCIATION LIMITED.

Principal and Agent—Agent's Commission on Sale of Company-shares—Rate of Commission—Evidence—Finding of Referee—Scope of Agency—Sales during Certain Period—Sales Made before Commencement of Agency—Appeal—Divided Court.

Appeal on behalf of the defendant association (by the liquidator) from an order of MIDDLETON, J. (26th September, 1917), allowing an appeal by the plaintiff from the report of an Official Referee by increasing the commission allowed to the plaintiff, and refusing to allow credit for \$2,105.50, alleged to have been paid by the association to the plaintiff.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

R. D. Moorhead, for the appellant.

I. F. Hellmuth, K.C., and J. H. Cooke, for the plaintiff, respondent.

MEREDITH, C.J.C.P., in a written judgment, said that three questions were involved in the appeal: (1) whether the plaintiff was entitled to a commission on sales of stock made between the 15th and 18th April; (2) whether he should be charged with money received by him on sales made by him before he became the association's agent; and (3) whether his commission should be calculated at 12 or 7 per cent.

On the second question Middleton, J., affirmed the report of the Referee; on the other two questions the findings of the Referee were reversed.

The terms upon which the plaintiff was employed seemed to the learned Chief Justice to have been broad enough to entitle the plaintiff to a commission in respect of the moneys involved in the first question.

The second question was wrapped in much uncertainty. At first sight it was difficult to understand why the matters between the plaintiff and his former employers should come into account between him and the association; but at the trial the association were made liable in respect of some of these matters, in respect of moneys which came to their hands out of these matters. No provision for liability on the part of the plaintiff to the association in respect of such matters was so made; and the Referee could