

was not then made, subsequently and as a result of the negotiations the principal made to the prospective purchaser a lease for three years with a collateral agreement giving the lessee the option of purchasing within a year, which the latter exercised: *Morson v. Burnside*, 31 O.R. 38.

Under an agreement whereby an agent was to receive a certain sum of money as commission if he found for his principal a purchaser who would pay not less than a specified amount in cash, the agent, upon finding a purchaser who paid only half such sum down but who was accepted by the owner the latter promising after the sale to pay the agent the sum stipulated as commission in the agreement of agency, was permitted by the trial Judge to recover on the common counts a sum equal to the amount promised him as commission on the grounds (1) that he could not have recovered on the contract itself "because of his non-literal performance of its terms" and (2) that the owner had made the subsequent promise. On appeal by the principal, the Court of Queen's Bench (Ont.) affirmed the trial Judge's decision as to the amount due the agent though they declared that while they did not hold that the agent should recover the exact sum stipulated as commission in the agreement by which he was hired, he was entitled to some remuneration—how much it was unnecessary to say in view of the subsequent promise of the owner and of the fact that no objection was taken to the amount of damages below: *Wycott v. Campbell*, 31 U.C.Q.B. 534.

An agent is entitled, if there has been no revocation of his authority and his contract of employment specified no time limit, to his commission for a sale by his principal to a purchaser to whose notice the property was brought by the agent though the sale was made without the owner knowing that the purchaser came to him through his agent: *Rice v. Gubraith*, 2 D.L.R. 859, 26 O.L.R. 43, 3 O.W.N. 815, 21 O.W.R. 571.

Unless there is a specific agreement to the contrary, the putting of a house into the hands of an agent for sale does not prevent the owner of the house from selling it himself to a person not introduced by the agent, or from selling it through a different agent. Accordingly, where a house is put into the hands of an agent for sale, and the agent finds a person willing to purchase it, but who cannot purchase it because the house has already been sold by the owner, the agent is not entitled to commission: *Brinson v. Davies*, 105 L.T. 134, 27 Times L.R. 442, 55 Sol. Jo. 501.

Under an agreement entitling the agent to a commission when the property was "disposed of," the remedy of the agent upon the wrongful refusal of his principal to sell is not by action for the commission which he can earn only in the terms of the contract. *Per Patterson, J.*, in *Adamson v. Yeager*, 10 O.A.R. 577, at p. 486. That, in the learned Justice's opinion, the proper remedy for the agent under such circumstances was an action for damages for refusing to sell, or an action on a *quantum meruit*, may be inferred from his adding to the above statement that the damages in an action for refusing to sell or the amount to be recovered