

contract of agency: *Marriott v. Brennan* (1907), 14 O.L.R. 508; *Fletcher v. Campbell* (1913), 29 O.L.R. 501.

Here the commission was to be paid "on the completion of the payment of the purchase-money by the purchaser." The money never was paid; and the evidence shewed that the purchaser never was ready and willing to pay it. It could not be said that the sale failed to go through from any default of the vendor.

It was not unlikely that, had Ramsden and Slater both lived, they would have completed the sale and purchase; but that they did not was certain; and it was equally certain that that was not due to the default of the defendants or their testator.

There was an attempt to shew that one Scott would have bought the property but for the default of the defendants. The answer to that was overwhelming: (1) it was not shewn that Scott was procured by the plaintiff; (2) it was not shewn what price he was prepared to pay.

The appeal should be allowed with costs and the action dismissed with costs.

SECOND DIVISIONAL COURT.

MAY 12TH, 1916.

*JAROSHINSKY v. GRAND TRUNK R.W. CO.

Railway—Injury to Pedestrian at Crossing—Evidence—Negligence—Contributory Negligence—Findings of Jury—Supplementary Findings Orally Made in Court—Appeal—Verdict for Plaintiff Affirmed—New Trial Refused.

Appeal by the defendants the Grand Trunk Railway Company from the judgment of FALCONBRIDGE, C.J.K.B., ante 39, in favour of the plaintiff against the appellants for the recovery of \$1,254 and costs, upon the findings of the jury at the trial.

The action was brought against the Wabash Railroad Company as well as the Grand Trunk Railway Company, but was dismissed as against the Wabash company before the case went to the jury. The injury on account of which the action was brought was caused by the plaintiff being struck by an engine of the Grand Trunk company when attempting to cross the railway lines.

*This case and all others so marked to be reported in the Ontario Law Reports.