

STRONG v. LONDON MACHINE TOOL CO.—MIDDLETON, J.—JAN. 8.

Principal and Agent—Agent's Commission on Sale of Assets of Company—Employment of Agent—Introduction of Purchaser—Dependent Commission Agreement—Termination—Quantum Meruit.—Action by an agent to recover commission upon the sale of the assets of the defendant company to the Canada Machinery Corporation, called "the merger." The defendant company was a family concern, one Yates and his sons holding the bulk of the shares. On the 14th July, 1911 (after negotiations had been proceeding for some time and a tentative agreement had been arrived at), a memorandum of agreement between the plaintiff and Yates was drawn up and signed, whereby Yates agreed with the plaintiff "to pay him the following commission: In the event of the London Machine Tool Company being merged with the Canada Machinery Corporation, and the London Machine Tool Company getting in preference shares the amount of their surplus and a bonus of \$50,000 worth of common stock, . . . F. T. Strong is to receive \$10,000 worth of common stock as commission, and also, in the event of the London Machine Tool Company receiving preference shares in excess of \$112,000 worth, twenty per cent. of such excess is to be delivered to F. T. Strong. This agreement is contingent upon E. G. Yates being able to retain the control of the London Machine Tool Company, and also contingent upon the deal going through." Thereafter, a formal agreement was executed between the company and "the merger," dated the 29th July, 1911; this was upon the lines of the tentative agreement and in accord with the expectation of the parties when the agreement of the 14th July was executed; but the "merger" refused to carry out the agreement of the 29th July; and the defendants were advised that they could not enforce it. The defendants, after further negotiations with the "merger," in the absence of the plaintiff abroad, sold out to the merger at the best price that could be obtained. Instead of there being a surplus over the \$112,000 of stock, the defendants received only \$55,000 in bonds and \$40,000 in cash; and out of this \$95,000 had to pay \$18,000 as being the excess of actual over scheduled liabilities. The plaintiff contended that he should receive the commission which the agreement of the 24th July called for, because it was the defendants' own fault if the agreement of the 29th July turned out to be unenforceable. The defendants contended that Strong was entitled to nothing—there being no surplus but a deficit. MIDDLETON, J., said that when the defendants accepted the plaintiff's services