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tiff after action commenced, assigned to Williams all his interest in the agreement for sale with A. S. Klingel. Williams then notified A. S. Klingel as the vendor named in the contract of this assignment. The defendants then repudiated the contract and refused to complete the sale.

In the alternative the plaintiff alleges that in 1907, A. S. Klingel purchased the land in question, and paid therefor and on April 18, 1908, caused the same to be conveyed to Simon Klingel, his father, who gave no consideration, and such transfer being voluntary and without consideration Simon Klingel therefore holds the land in trust for A. S. Klingel, and A. S. Klingel being beneficial owner is therefore bound by his agreement with Matzka. The defendants refuse to complete the sale, and plead that A. S. Klingel had no authority from Simon Klingel to sell the land.

The action was dismissed.

Alex. Ross, for plaintiffs.

H. Y. MacDonald, for defendants.

BROWN, J.:—The authority of an agent not expressly authorized to sell real estate to exercise such power is not readily inferred: 31 Cye. 1361. After carefully going into the evidence, including those portions of the examination for discovery of the defendants which were put in evidence herein, I am of opinion that I would not be justified in finding that A. S. Klingel had authority to enter into the contract in question on behalf of Simon Klingel, or that Simon Klingel had subsequently ratified such contract. Both of the defendants deny such authorization or ratification, and while there are suspicious circumstances connected with their evidence, yet in view of their positive denial, and in the absence of any positive evidence shewing authorization to sell, I am of opinion that the plaintiffs' action must fail. I am not required to consider what remedy the plaintiff may have as against A. S. Klingel, as no such relief is sought for in this action. Judgment will, therefore, be entered up in favour of the defendants, with costs.

Action dismissed.

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CHAPMAN v. McWHINNEY.

Ontario Supreme Court (Appellate Division), Meredith, C.J.O., MacLaren, McGeer, and Hodgins, JJ.A. January 27, 1913.

[*Chapman v. McWhinney*, 4 O.W.N. 417, varied.]

BROKERS (§ II B—12)—*Sufficiency of Brokers' Services — Evidence.*]—Appeal by the defendant from the judgment of Lennox, J., *Chapman v. McWhinney*, 4 O.W.N. 417.

THE COURT varied the judgment below by reducing the