

vendor any remuneration or commission contingent on the sale of the property, he acts in contravention of his duty to his principal and forfeits his right to commission from the latter : *Kersteman v. King*, see *ante*, vol. 15, p. 140.

Even in the event of an exchange of lands, the agent is not entitled, under some colourable pretext, to receive remuneration from the person with whom he bargains on behalf of his principal. *Culverwell v. Compton et al.*, 39 C. P. 342, is a case in point. The plaintiff, a real estate agent, was employed by the defendants to sell certain land at a stipulated price. In the course of his employment, and after negotiating with an intending purchaser, an exchange was made, certain other lands being taken by the defendant as part payment. The plaintiff demanded commission from the purchaser for bringing about the exchange. This demand was acceded to by the latter, though without acknowledging the right of the plaintiff to make it, and a sum of money was paid over to the plaintiff, who, however, contended afterwards that it was not paid as a commission but as a gratuity. The decision affirmed that such a sum, whether received as commission, strictly so-called, or as a gratuity, was a profit directly made in the course of, and in connection with, the plaintiff's employment, and would, therefore, belong to the defendant as his employer. But as it appeared that the defendants knew that the plaintiff had received the money, and they made no objection to his retaining it, but with full knowledge thereof, carried on negotiations for a settlement of his claim for remuneration for his services, they could not afterwards, in an action by the plaintiffs to recover for the services to them in disposing of the land, offset his claim by the amount which he had received from the other party.

All the conditions covenanted to be performed by the agent must be fulfilled to enable him to succeed in an action for his commission. When a plaintiff claimed commission on sale of land by A to the defendant, one term of the plaintiff's contract was that A's title should be approved by the defendant's solicitor. The defendant broke off the sale of his own accord, so that the title was not submitted to the defendant's solicitor. The plaintiff could not recover without proving that the defendant's solicitor had approved A's title, or else that such a title was submitted to him as it was unreasonable for him to disapprove : *Clark v. Wood*, 9 Q. B. D. 276. The following case, though not relating to dealings with lands, illustrates the same general principle: A having a ship to sell, told W that if he was the means of introducing a purchaser, a commission would be paid to him. W having an offer through B, A agreed that if successful, W and B should share the commission. The first offer fell through, also a second from C through B. C, after some time, wrote direct to A, introducing another person, who eventually bought. It was held that C, as agent of the purchaser, having acted on information received from B, W was entitled to his commission, the chain of connection being sufficiently established : *Wilkinson v. Alston*, 48 L. J. Q. B. 733.