

signing the contract of sale in his own name as agent for the appellant. I think the affirmative evidence of the appellant as to what occurred with defendant Thompson is to be preferred to his absence of recollection on the point, and her conduct confirms her truthfulness. I think also the weight of evidence is in affirmation of the writing that the company was constituted her agent and not defendant Thompson individually. Now, if the agent was the company, Thompson had no right of his own motion to sign so as to represent or bind that company. The company was not a nonentity, though not of great material substance—having a little land and a president. But Thompson does not assume to sign for the company; he signs for himself as agent; and, unless his signature is sufficient under the Statute of Frauds, it cannot be said that the contract of sale has been signed by or on behalf of the constituted agent—the Real Estate Agency Co. Upon this ground, I think there is no contract signed by or for the owner within the meaning of the statute.

Could Thompson be regarded as a collateral agent, on the oral testimony I think there would be a good equitable defence as against him, that he failed to carry out the instructions given as to the manner of sale—that she did not contemplate or direct an immediate sale or an immediate relinquishing of possession, and that there was, at the least, improvidence if not carelessness on the part of the agent, which should induce the Court to hold its hand and not specifically perform the contract against the unwilling owner. It is not without hesitation that I have reached this result, but it seems to me preferable to the view taken by Mr. Justice Teetzel.

Appeal allowed without costs, and action dismissed without costs.

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JANUARY 24TH, 1906.

DIVISIONAL COURT.

IMPERIAL CAP CO. v. COHEN.

*Sale of Goods—Contract—Statute of Frauds—Order Taken by Travelling Salesman of Vendor—Memorandum—Authority of Salesman as Agent of Purchaser—Correspondence—Recognition of Order.*

Appeal by defendant from judgment of District Court of Algoma in favour of plaintiffs upon the fourth claim made