

missions received by the company upon sales of suburban property, such as the Schafer Syndicate sale; but the defendant company contended that no "commission" was earned or collected by the company; that they bought the property and afterwards sold it at a profit of \$13,000. LENNOX, J., however, was of opinion, agreeing with the Referee, that, upon the evidence, the \$13,000 was to all intents and purposes a commission and nothing else; and, if it were otherwise, that the plaintiff's agreement with the company, properly construed, meant 5 per cent. on what the company should make, whether as commission strictly or as profits; and he was entitled to the \$650.—Held, also, that the plaintiff was entitled to \$229.50 upon the Garden City sale, as reported by the Referee; the sale of stock was equivalent to a sale of the land.—But held, in respect to the Ashley sale, that the Referee had credited the plaintiff with \$400 too much—the plaintiff was entitled to a percentage upon the commission actually received by the company and to no more; the item of \$532.03 should be reduced to \$132.03.—The defendant company appealed against the Referee's apportionment of costs. The decision of the Referee ought not to be disturbed. Costs were not in his disposal by the order of reference, but the parties agreed to leave the question of costs to him—to substitute the Referee for the Court. This voluntary arrangement ought not to be read as giving either party two chances. If it was only meant to see what he would say about it, a right to appeal should have been reserved. In any case, it could not be said that the Referee did not exercise a wise discretion. The reduction in the amount allowed to the plaintiff, however, opened the question; and the Judge had now to consider what should be done as to costs with the case as it now stood. As a matter of discretion, having regard to all the circumstances, he left the costs of the action and reference at \$189, to be paid by the defendant company. No costs of the appeal. A. Bicknell, for the defendant company. A. W. Holmsted, for the plaintiff.