

SECOND DIVISIONAL COURT.

MAY 12TH, 1916.

CLAYTON v. RAMSDEN.

Principal and Agent—Agent's Commission on Sale of Land—Contract—Construction—Share of Profits on Sale—Quantum Meruit—Damages—Finding of Trial Judge—Appeal.

Appeal by the defendants from the judgment of CLUTE, J., ante 107.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

S. H. Bradford, K.C., for the appellants.

D. O. Cameron, for the plaintiff, respondent.

The judgment of the Court was read by RIDDELL, J. After setting out the facts, he said that the trial Judge was right in holding that there could be no recovery on the commission-agreement; but he (RIDDELL, J.) was unable to agree that there could be any cause of action dehors the agreement. The action was specifically on the agreement; the plaintiff himself swore that that set out the true agreement between himself and Ramsden, and his counsel did not go beyond the document. These considerations were apparently not present to the mind of the trial Judge, but they could not be disputed.

It was, however, contended for the plaintiff that the judgment erred on the first point, and that under the document the plaintiff could hold his verdict.

The agreement was two-fold: (1) an agreement to sell to the plaintiff for \$9,000, returning \$1,000 to him, i.e., in substance an agreement to sell to him for \$8,000; (2) an agreement to pay to the plaintiff \$1,000 out of a purchase-price paid by another, amounting to \$9,000, that other to be obtained by the plaintiff.

The first part need not be considered; the plaintiff had chosen the second, asserted that he had performed his part, and brought an action on that basis months before the defendant sold the land. There was no pretence that he would or could have paid \$8,000 cash; the argument advanced before this Court (for the first time) that the plaintiff was wronged by the sale without giving him a chance to buy, was hopeless and an argument of despair.

The right of a real estate agent to a commission where a sale is not in fact carried out depends on the exact wording of the