

The declaration set up that within the twelve months preceding the 21st September, 1878, the plaintiff was employed by the defendant, living in Nova Scotia, through the instrumentality of one Constant, also residing there, to dispose of a certain mining property belonging to the defendant, in Nova Scotia, and known as the Jennings gold mine. The price of the mine, at the time the plaintiff was first employed to dispose of it, was \$12,000.

Afterwards, by the plaintiff's advice, it was raised to \$16,000, of which \$5,000 was to be commission. This was during the summer of 1878. In the beginning of September of that year the plaintiff heard through one Hawkes, that John A. Cameron, of Fairfield, in the county of Glengarry, wished to dispose of his property there, a homestead, valued at \$45,000. Cameron being a dealer in mining property, negotiations were opened with him, which resulted in a visit, on the 3rd of September, of Caffrey and some of his family to the property of Cameron, at Fairfield. Both defendant and the members of his family with him expressed themselves as delighted with the property and most anxious to effect a transfer. The parties having returned to Montreal, a basis of agreement was arrived at, drawn up and signed by the parties in plaintiff's office, and defendant expressing himself perfectly satisfied with the arrangement, gave the plaintiff a written acknowledgment in the following terms:—

"Montreal, 15th Sept., 1878.

"Having to-day made arrangements to sell the mines to the said J. A. Cameron for \$20,000, upon the deeds being completed, I am to settle with you for \$5,000, as your commission, the \$1,000 to be arranged with Mr. Constant out of that sum."

Other visits and interviews took place, and on the 21st September an amended agreement was entered into, in plaintiff's office, containing some slight differences of arrangement, the terms being \$45,000 for the Cameron property, to be made up as follows:—The Jennings gold mine at a valuation of \$20,000, a mortgage on the Cameron property of \$14,000, to be assumed by defendant, and for the balance of \$11,000 Cameron was to take defendant's homestead property at Truro at such price as should be agreed upon, or defendant to raise the cash by mortgage of his property there. Defendant also at the time of signing this latter

agreement gave to Cameron a transfer of title to the mine property which the latter immediately sent to Nova Scotia and caused to be registered. Defendant then returned to Nova Scotia, and on the 28th September wrote to plaintiff withdrawing from and repudiating the entire transaction.

The plea was that the deeds had never been completed; that there were undisclosed mortgages, and Cameron never was in a position to give a good and valid title; that pending the negotiations Cameron lost the ownership of the property, and the plaintiff knew of this when he handed the deed to Cameron; that the animals also had been disposed of at judicial sale and otherwise, and that the undertaking of defendant to pay plaintiff \$5,000 being conditional on the completion of the deeds, and the deeds never having been completed by the carrying out of the transaction, plaintiff could claim nothing for his services, and the action should be dismissed.

Counsel for plaintiff cited 1472 and 1722 C.C.; Evans, Principal and Agent, 340; *Love & Miller*, 21 Am. Rep., 192; *Chapin & Bridges*, 116 Mass. 105; *Cooke & Fiske*, 12 Gray, 491; *Drury & Newman*, 99 Mass. 258; *Knapp & Wallace*, 41 N.Y. 477; *Rice & Mayo*, 107 Mass. 150; *Higgins & Moore*, 34 N.Y. 417; *Richards & Jackson*, 1 Am. Dig. 24, 400; *Fortin & Dupras*, Jetté, J., Sup. Ct., and *Geddes & MacNider*, Rainville, J., do.

The Court held that there was no proof that Cameron was not in a position to deliver his property as agreed upon, or of any of the things complained of, and even if there were, that according to the well established jurisprudence of this country, and according to the article of the code 1722 above cited, the commission of the plaintiff was earned when the parties whom he had brought together entered into the agreement, and the amount was fixed by the acknowledgment of the defendant himself.

Judgment for plaintiff.

Stevens & Lighthall, for plaintiff.

E. Barnard, Q.C., Counsel.

Edward Carter, Q.C., for defendant.

SUPERIOR COURT.

MONTREAL, April 30, 1883.

Before TORRANCE, J.

BOURDON et al. v. TRUDEL.

Sale—Credit given to another.

The action was to recover the amount of an account for \$123. The defendant answered