

An agent is not entitled to any remuneration in respect of a transaction in which he has been guilty of any misconduct or breach of faith towards his principal and therefore a recovery of commission will be denied a company in business as a real estate broker, where it appears that the owner of the property employed the company to sell the same, the listing thereof being done by a clerk, who introduced to the owner another clerk of the company, as a gentleman recently arrived from England and anxious to buy property; that in the negotiations that followed the owner set a certain price which the intending purchaser having been previously informed by his fellow-clerk that the property could be bought for a less sum, refused to pay, and that the other clerk without disclosing that he and his companion were in the agents' office and that the intending purchaser had seen the listing or had been told the minimum figure at which the owner would sell, took part in the discussion that was going on between the owner and "the gentleman from England," and acting as well for the seller as for the buyer, brought the parties together, with the result that the owner agreed to accept the minimum price, but afterwards repudiated the contract: *Canadian Financiers, Ltd. v. Hung Wo* (B.C.), 1 D.L.R. 38.

To the same effect are *McLeod v. Higginbotham*, 18 W.L.R. 296 (B.C.); *Myerscough v. Merrill*, 12 O.W.R. 399; *Price v. Metropolitan House Investment and Agency Co.*, 25 Times L.R. 630 (C.A.).

Where a land agent in the course of his employment after negotiating with an intending purchaser effected a sale by having land of the purchaser taken in part satisfaction of his principal's price after the agent on his demand had been paid by the purchaser a commission for effecting such exchange, of which payment his principal was aware and made no objection to his retaining it and the principal afterwards negotiated with the agent for a settlement of his remuneration, the principal cannot afterward in an action by the agent for his commission set off the sum paid the agent by the purchaser: *Culvericell v. Campton*, 31 U.C.C.P. 342.

The owner of land who, before he closed the transaction, was informed by one of the intending purchasers that the agent he had employed to sell the same was to be paid by the purchasers a certain sum of money if the sale was completed, cannot, after he went on and effected the sale, recover the commission he paid the agent: *Webb v. McDermott*, 5 O.W.R. 566, affirming 3 O.W.R. 644, which reversed 3 O.W.R. 365.

Cases in which the Right Commission was Upheld.

An agent is entitled to his commission if he shews that in accordance with his contract he has obtained a purchaser ready and willing and able to buy on the terms offered who was accepted by the principal after the latter had succeeded in adding additional terms upon which he insisted, where the sale finally fell through because of the sole fault of the principal: *Bagsheve v. Rowland*, 13 B.C.R. 262.

Where a person opened negotiations with an agent for an exchange of