

In the American courts, where an agent advertised land at his own expense, under an agreement to find a purchaser, and a person who had seen the advertisement directed the buyer to the owner, the latter was liable for the commission.

In *Mansell v. Clements*, L. R. 9 C. P. 139, the plaintiffs were instructed by the defendants to offer a leasehold house for sale, for which they were to receive a commission if they found a purchaser, but only a guinea for their trouble, if the premises were sold without their intervention. The particulars were entered in the plaintiffs' books, and they gave a few cards to view. One W., who had observed on passing that the house was for sale, but without having examined it, called at the plaintiffs' office and obtained a card to view the premises in question, amongst others, the terms being written by the plaintiffs' clerk on the back of the card. W. went to the house, thought the price (£2,000) too high, and went away; but subsequently he, without the further intervention of the plaintiffs, renewed his negotiations with a friend of the defendants, and became the purchaser for £1,700. It was held that there was evidence for the jury that W. had become the purchaser of the premises through the plaintiffs' intervention, and the latter were entitled to commission. *Seemle*, that it was proper to ask the purchaser whether he would have made the purchase if he had not got the card from the plaintiff. His answer to the question was in the negative.

The rule of equity which prevents an agent from acquiring any benefit for himself, other than his commission, from any transaction in which the agency is concerned, is strictly enforced in all dealings in regard to the sale of real estate for commission. The position of the agent being one of trust, he cannot lawfully place himself in a situation where he may be tempted to act against the interests of the principal, either for his own advantage, or that of some third person. An agent had been employed to sell or exchange certain lands; this, however, he had been unable to do, and the property was shortly afterwards offered for sale by auction under a power of sale in a mortgage. The agent bid, and became the purchaser. In an action impeaching the purchase, the court (SPRAGGE, C.) declared the agent a trustee for the principal: *Thompson v. Holman*, 28 Chy. 35. The grantee of the Crown executed a power of attorney in favour of an agent, authorizing him to sell or mortgage all her lands in Upper Canada, and subsequently went to England, where she continued to reside until her death. During her residence there she urged the agent to dispose of the property, and in the course of the correspondence stated that she would be willing to accept £1,000 for it. The agent, in 1844, having directed the property to be sold by auction, his sister became the purchaser for £628, having authorized the person who attended to bid at the sale on her behalf, to go as high as £800 for the property. Upon a bill filed by the son and heir of the owner, in 1858, the court set aside the sale by auction as having been made at a price not warranted by the agent's authority: *Kerr v. Lefferty*, 7 Chy. 412.

The case of an agent acting for both parties, either on an exchange or otherwise, is not unknown, and leads to unpleasant complications. If an agent employed on commission to purchase real estate receive or agree to receive from the