

plaintiff to continue to expend money in advertising for months after the property had been sold, and give him no remuneration for his services or expenditures, either before or after the sale, that is, if the construction contended for by the defendant were correct.

DRYSDALE, J.:—Plaintiff is a real estate agent at Truro and defendant placed in his hands for sale a farm under the following terms:—

“I hereby request W. D. McCallum or assigns to register the real estate or property mentioned herein in his real estate register and constitute and appoint him my lawful agent, and authorize him to sell the above described real estate or property for me and on my behalf at the price mentioned above or such lesser price that I may afterwards agree upon; and I authorize him to advertise such property in such manner as he may wish, such advertising, however, to be without cost to me except such as is covered by the commission in case of a sale.

In consideration of said W. D. McCallum registering my said real estate or property for sale in his real estate register, I hereby agree to pay him a commission of three per cent. of the price obtained whenever a sale of the property, or any part thereof takes places.

Said commission to be paid by me whether said real estate or property is sold, either at the price mentioned above or at such other price that I may hereafter accept for said real estate or property. If, however, property does not sell no commission will be charged.”

The plaintiff failed to sell the property and defendant subsequently made a sale with which plaintiff was in no way connected. It was conceded on the argument that plaintiff was not the efficient cause of the sale, but the case was argued for him on the ground that under the agreement the plaintiff is entitled to a commission on three per cent. on any sale of the property, no matter by whom made or when, and even although the plaintiff had nothing whatever to do with effecting it. The case for plaintiff is put on the broad ground that the agreement entitles the plaintiff to a commission even although he fails to sell, and defendant is obliged to employ and pay another estate agent to make the sale, or even in the event of a judicial or execution sale of the property adversely to defendant under process of the court.