

FALCONBRIDGE, C.J.K.B.:—There is very little dispute about the facts. In any conflict which could not be settled by reference to a writing, the plaintiff would fail to satisfy the burthen of proof.

In his telegram, the defendant declared positively that he would not take less than \$100,000 net to him, and that he would not pay any commission on that figure, and to order the payment of a commission to the plaintiff would be to place it in the power of an agent to dictate to his employer at what price the latter should sell.

Here, as in *Hubbard v. Gage* (1913), 4 O.W.N. 901, the transaction was in the form of an option.

In *Toulmin v. Millar* (1887), 58 L.T.N.S. 96, a case strongly relied on by the plaintiff, Lord Watson says (p. 97): "The agent then says: 'I think I can find you a purchaser. Will you not sell?' To which he replies: 'I will sell for £10,000, not a sixpence less; if you can get that sum sell; if not, let the property.' I am not prepared to hold that an arrangement expressed in these or in equivalent terms would confer a general employment to sell upon the agent."

This case falls rather within the lines of *Sibbitt v. Carson* (1912), 26 O.L.R. 585: "The mere finding of a purchaser is not enough; there must be a contract to pay; and the terms of the contract, including all limitations as to time, must govern:" per Middleton, J., at p. 587; affirmed in appeal (1912), 27 O.L.R. 237; and *Sutherland v. Rhinhart* (1912), 5 Sask. L.R. 343.

I have of course referred also to *Burchell v. Gowrie and Blockhouse Collieries Limited*, [1910] A.C. 614, and *McBrayne v. Imperial Loan Co.* (1913), 28 O.L.R. 653.

The plaintiff fails. The defendant might have afforded to be a little generous. He denies even that he offered the plaintiff \$250 for his expenses. For this and other reasons, in dismissing the action, I make no order as to costs.