

Held, allowing the mandamus, that the relator, notwithstanding the indictment, being "otherwise in custody awaiting trial" within the meaning of sec. 825 (4) of the Code, was entitled to his election under sec. 827 of the Code, and that the judge had jurisdiction to proceed thereunder, and should put the relator to his election as therein provided, and if he elected to be tried before him that he should proceed to try him for, the said charge. *R. v. Sovereign*, 20 Can. Cr. Cases 103, considered.

Power, K.C., for the motion. *Morrison*, K.C., *contra* for the Crown.

Province of Manitoba.

KING'S BENCH.

Mathers, C.J.K.B.]

[15 D.L.R. 588.

ALEXANDER *v.* ENDERTON.

Brokers—Commission to purchaser's agent as condition of contract—Effect.

Where a real estate broker enters into negotiations with the owner to buy for an undisclosed purchaser, and on concluding the bargain includes in it a condition which the owner accepts, that the latter to whom he was under no fiduciary obligation should pay him a commission on the sale, such will not alone constitute the broker an agent of the vendor.

J. B. Coyne, and *J. P. Foley*, for plaintiff. *R. M. Dennistoun*, K.C., *A. J. Andrews*, K.C., *W. H. Curle*, *F. M. Burbidge*, and *E. R. Chapman*, for defendants.

ANNOTATION ON ABOVE CASE IN 15 D.L.R. 595.

It is a well-established rule that an agent to whom instructions are given to procure a purchaser for property, has not, although the price and terms of sale are named in the instructions, without the concurrence of his principal, authority to enter into a binding contract with a purchaser to sell the property: *Margolis v. Birnie* (Alta.), 5 D.L.R. 534, 4 A.L.R. 415; *Doyle v. Martin*, 3 A.L.R. 184; *Williams v. Hamilton*, 14 B.C.R. 47; *Gilmour v. Simon*, 15 Man. L.R. 205, affirmed 37 Can. S.C.R. 422; *Ryan v. Sing*, 7 O.R. 266; *Bradley v. Elliott*, 11 O.L.R. 398; *Havner v. Weyl* (Sask.), 5 D.L.R. 141, affirmed 7 D.L.R. 682; *Schaefer v. Millar* (Sask.), 11 D.L.R. 417; *Boyle v. Grassick*, 2 W.L.R. 284, reversing 2 W.L.R. 99; *Prior v. Moore*, 3 Times L.R. 624; *Chadburn v. Moore*, 61 L.J.Ch. 674; *Godwin v. Brind*, 17 W.R. 29; *Wilde v. Watson*, 1 L.R. Ir. 402; *Hamer v. Sharp*, 44 L.J. Ch. 53, L.R. 19 Eq. 108.