

FIRST DIVISIONAL COURT.

APRIL 23RD, 1918.

*WHEELER v. HISEY.

Principal and Agent—Contract Made by Son in Respect of Father's Farm—Authority to Land Agents to Sell—Exclusive "Listing" for Defined Period—Sale during Period without Intervention of Land Agents—Action by Land Agents for Commission—Failure to Shew Ratification by Father—Right of Land Agents against Son.

Appeal by the defendant Abraham Hisey from the judgment of the Senior Judge of the County Court of Simcoe, after the trial of the action with a jury, upon the findings of the jury, in favour of the plaintiffs, land agents, for the recovery of a sum of money as commission on the price (\$9,000) at which the appellant sold his farm; and cross-appeal by the plaintiff against the defendant Norman Hisey.

The appeal was heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, JJ.A.

W. A. Boys, K.C., for the appellant.

D. L. McCarthy, K.C., for the plaintiffs, respondents.

MEREDITH, C.J.O., reading the judgment of the Court, said that the employment of the respondents as agents to sell was by the defendant Norman Hisey, the son of the appellant, and was evidenced by a writing, signed by Norman Hisey, dated the 20th October, 1916, giving "the exclusive sale of my property," describing it, "good for 90 days," to the plaintiffs, "and in case of a sale being made I will pay to them a commission of 2 per cent. on the selling price."

The farm was owned by the appellant, and the son had no interest in it, but he owned the stock upon the farm, and had made some improvements on it, and would probably have become the owner of it at his father's death.

There was a conflict of evidence as to what had occurred at the time the document was signed; but it was clear that the son did not assume in entering into the agreement to act for his father. What the son said was that he would see his father, and, if his father was not satisfied, he would let the respondents know. On returning home, the son informed his father that he had "listed" the farm with the respondents, but he did not tell his father that he had given an exclusive authority to sell. The