

there is a good deal in the evidence to warrant the conclusion that the 5 per cent. commission was earned and became payable as soon as a binding agreement for the purchase of the property was entered into between the defendants and Hanson. There was no agreement by the plaintiffs to share the risk of Hanson failing to pay, nor any warranty, express or implied, of his solvency or financial ability.

The defendants dealt with him and entered into the agreement with him in reliance upon their own knowledge. They afterwards, without any reference to the plaintiffs, and without their knowledge or consent, varied the terms of the original agreement in ways that would have been to the plaintiffs' disadvantage as regards times of payment. So far as appears, the plaintiffs were never consulted in regard to the dealings with the property after the agreement with Hanson was entered into. This line of conduct was not consistent with the defendants' present contention that the plaintiffs were looking to Hanson's payments for the receipt of their commission.

But, even if this be not the proper conclusion, it does not end the plaintiffs' claim. On a careful consideration of the testimony, I am unable to agree with the Chancellor that there was such a break in the continuity of the transactions, commencing with the agreement with Hanson and ending with the agreement with Ferguson, as to deprive the plaintiffs of their right to payment of commission on the whole purchase money paid or payable under the latter agreement. Viewed in whatever light it may be, upon the evidence it appears to me that the sale of, or rather agreement to transfer, the property to Ferguson was nothing more than the final consummation of the agreement for sale initiated with Hanson by the agreement of 31st October, 1905 (exhibit 12). This was varied as to terms of payment by the agreement of 27th November, 1905, and both these were replaced by the agreements of 15th January, 1906, whereby they were cancelled. By the terms of these latter agreements, all contained in them was made to enure to the benefit of and be binding upon the personal representatives and assigns of the parties thereto. In all substantial respects these agreements corresponded with the earlier agreements, the main difference being as to the terms and times of payment. There had been difficulty in shewing a title, owing to the existence of registered cautions which it was necessary to get rid of, and in regard to which actions were pending.