

## Province of Manitoba.

### COURT OF QUEEN'S BENCH.

KILLAM, J.]

[Dec. 10, 1895]

BOUGHTON v. HAMILTON PROVIDENT AND LOAN SOCIETY.

*Principal and agent—Commission on sale of land.*

Appeal from the judgment of the County Court of Neepawa in favor of the plaintiff for the full amount of commission claimed by him on a sale of land as agent for defendant.

The plaintiff having been instructed by the defendant's general manager to sell a certain piece of property belonging to defendant, entered into an agreement with one Adair for the sale of the land to him, and received a deposit of \$25 on account of the purchase money, which sum he transmitted to the manager, asking him to send the agreement to be signed by the purchaser. The manager afterwards procured the purchaser to execute a written agreement for the completion of the purchase on substantially the same terms as had been arranged verbally with the plaintiff, but independently of him. It appeared, however, that before seeing the plaintiff, Adair had applied to the defendant's manager to purchase the land in question, and had been driven over it by him and informed of the price; and been requested, if he should purchase, to close the transaction with one Beattie, another agent of defendant. Instead of going to Beattie, Adair consulted the plaintiff as to the proposed purchase, and the result was the agreement and payment of the deposit. On receiving the plaintiff's letter with the deposit, the manager sent him a receipt for the purchaser, and asked whether the sale was made by the plaintiff, or if this was the man whom he, the manager, had driven out to see the farm, and stating that he presumed if this was the same man, that the plaintiff would have no charge for commission. To this letter the plaintiff made no reply.

*Held*, that the plaintiff was entitled to be paid for his services in procuring the agreement and deposit, although he did not procure the purchaser to sign the written contract, because the defendant had availed itself of his services and adopted the bargain which he had made, and because the circumstances showed that the plaintiff was not expected to procure the signature of a written contract; and that he should be allowed one-half of the full commission payable in case the agent procures the signature of the written contract in addition to making the verbal sale.

Sometimes the agent is required to procure the signature to a written contract before he earns any commission, but under the circumstances of this case such would not be a proper conclusion.

In other cases, perhaps, it might be inferred that there was an implied contract on the part of the principal to furnish the written agreement, so that the agent might get it signed and earn his whole commission, for breach of which contract damages could be recovered, but no such contract could be implied here.

Judgment reducing the verdict one-half without costs of the appeal.

*R. M. Smith* for plaintiff.

*O. H. Clark* for defendant.