

quently sold; that the plaintiff was the first man to take Kleinman, who became the purchaser at \$23,600, to see the property; that the plaintiff notified the defendant that he had taken Kleinman to see the property; that the sale was afterwards made by other agents, who were paid by the defendant \$200 commission; and that the transaction was not the result of anything that the plaintiff did.

The appeal was heard by MULOCK, C.J.Ex.D., CLUTE and SUTHERLAND, JJ.

J. M. Ferguson, for the plaintiff.

L. F. Heyd, K.C., for the defendant.

CLUTE, J., referred to *Green v. Bartlett*, 14 C.B.N.S. 681; *Street v. Smith*, 2 Times L.R. 131; *Tribe v. Taylor*, 1 C.P.D. 505; *Lumley v. Nicholson*, 2 Times L.R. 118; *Mansell v. Clements*, L.R. 9 C.P. 139; *Thompson v. Thomas*, 11 Times L.R. 304; *Wilkinson v. Alston*, 48 L.J.Q.B. 736; and proceeded as follows:—

In the present case it seems to me clear that the plaintiff did that which resulted in the sale. The parties were brought together by his act; and the form of the agreement entered into by the defendant with the other agents clearly indicates that the defendant realised that the plaintiff had a claim for commission. The trial Judge thought that the defendant had the plaintiff in mind when he got the agents to sign the document (i.e. an agreement to accept \$200 commission for the sale and to be responsible for any other agent claiming commission from the sale of the property). He says, "It is a case of the other agents appearing at an opportune time and snatching the transaction out of the hands of the plaintiff." The "continuity," as it is called in *Wilkinson v. Alston*, 48 L.J.Q.B. 736, was not broken. The purchaser was the person who was first introduced by the plaintiff, and the fact that he concluded the transaction through other agents does not, in my opinion, deprive the plaintiff of his commission.

As to the amount of the commission, the evidence is that the price first named was \$24,000. The evidence shews that 2½ per cent. is the usual commission charged on sales of this kind. I think the plaintiff is entitled to recover commission, at that rate, upon \$23,600, which would amount to \$590.

The judgment of the Court below should be set aside, and judgment entered for the plaintiff for \$590 with costs of the action and of this appeal.