

MIDDLESEX COUNTY.

1ST DIVISIONAL COURT.

MAY, 1913.

MOODY v. KETTLE.

4 O. W. N. 1410.

Principal and Agent—Commission on Sale of Land—Introduction of Purchaser by Agent—Purchase of Other Property not Listed with Agent—Agent's Right to Commission.

Defendant listed a coal yard with plaintiff, a real estate agent, for sale on commission. Plaintiff introduced a prospective purchaser to defendant, but after examination of the property he would not purchase, but later he purchased another coal yard from defendant. Plaintiff brought action to recover a commission on the sale of the unlisted yard.

MACBETH, Co.C.J., dismissed the action.
Starr v. Royal, etc., 30 S. C. R. 384, followed.

The defendant agreed to pay the plaintiff, a real estate broker, a commission, if the plaintiff sold for defendant a coal-yard on Maitland street owned and occupied by defendant.

The plaintiff introduced one Mathews as a prospective purchaser of this coal-yard, but after examining the property in the defendant's presence, Mathews declined to buy it. The defendant then offered to sell a smaller yard on Hill street which had been leased to a tenant, but was then vacant.

About six weeks afterwards Mathews in partnership with a former tenant of defendant took from the defendant a lease of the Hill street yard with an option of purchase, and in January, 1913, bought the property for \$1,925.

Plaintiff then brought this action to recover a commission on the purchase money of the Hill street yard.

G. S. Gibbons, for plaintiff.

T. H. Luscombe, for defendant, cited *Cronk v. Carman*, 19 O. W. R. 145, as to the necessity for a contractual relationship.

HIS HONOUR JUDGE MACBETH:—I find as a fact that defendant did not at any time engage the plaintiff to sell the Hill street yard and it seems to be a complete answer to plaintiff's claim to shew that he was not at any time employed to sell the Hill street yard.