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APPELLATE DIVISION.

JULY 2ND, 1915.

*ROSE v. MAHONEY.

*Principal and Agent—Claim for Commission on Sale of Land—
Failure to Establish Agency — Recognition of Agent by
Name and Promise to Pay Commission Inserted in Sale Con-
tract without Knowledge of Vendor—Absence of Negligence.*

Appeal by the defendants from the judgment of the Senior Judge of the County Court of the County of York in favour of the plaintiff for the recovery of \$406.25 and costs, in an action for commission on a sale of land.

The appeal was heard by FALCONBRIDGE, C.J.K.B., MAGEE, J.A., LATCHFORD and KELLY, JJ.

E. Meek, K.C., for the appellants.

E. R. Sugarman, for the plaintiff, respondent.

KELLY, J., in a considered judgment, said that the evidence convinced him that the relationship which existed between the plaintiff and the defendants' solicitor, who drew the contract between the defendants as vendors and the purchaser, and who inserted the name of the plaintiff as the defendants' agent and a promise to pay him a commission, was such that any right the plaintiff might have to a commission, or to a share of a commission (apart from anything that might be deduced from the mention of the plaintiff's name), was against the solicitor, and not against the defendants. There was no evidence that the defendants employed the plaintiff, or that their solicitor had any authority to appoint him as their agent, or to delegate to him or to

*This case and all others so marked to be reported in the Ontario Law Reports.