

brought shall be in writing separate from the sale agreement and signed by the party," etc.: 8 Geo. V. ch. 20, sec. 58.

The agent, to succeed in an action for a commission, must have (1) an agreement, (2) in writing, (3) separate from the sale agreement.

Assuming that the plaintiff has an agreement in writing, the statute requires that this shall be separate from the sale agreement. The "sale agreement" is the offer to exchange and the acceptance of the offer. The agreement to pay commission is not separated from the acceptance, i.e., from the sale agreement—it is complicated with it in such a way that the signing of the one is the signing of the other.

It was argued that the agreement to pay commission was separate from the sale agreement because the signature of the defendant was to two separate and distinct agreements; but this could be said of any agreement to pay commission.

The statute must be given a common sense interpretation, and that could only be that the agreement must be so separate that the land-owner is not obliged to sign both when signing one, and is not obliged to pay a commission on penalty of not having a contract for sale.

It is not necessary to decide in this case that the agreements must be on separate sheets of paper. A land agent who fails so to separate them will, however, have no cause of complaint if a Court should so hold. There can be no possible objection to separate papers, and a contrary course would indicate a desire to get round the statute.

The appeal should be allowed with costs and the action dismissed with costs.

MIDDLETON, J., agreed with RIDDELL, J.

MEREDITH, C.J.C.P., and LATCHFORD, J., agreed in the result, for reasons stated by each in writing.

*Appeal allowed.*