

father that he will accept \$12 per acre for the Headingly farm. As you know, James Scott has this farm in hand for sale and I have written to him to take the matter up with you. Will you therefore please call on him and arrange regarding commission, as, of course, I cannot afford to pay more than one commission. No doubt he will agree to divide with you."

Plaintiff did not call on Scott nor did Scott call on plaintiff in relation to the matter, but the plaintiff took his purchaser to the office of the defendant's solicitors in Winnipeg to whom the purchaser paid \$500 on account and stated his readiness to pay the balance as soon as title could be transferred to him.

A few days before this, however, the other agent, Scott, found a purchaser for the property at the same price and telegraphed defendant, who afterwards carried out the sale to Scott's purchaser through the same solicitors and paid Scott the usual commission. Defendant did not notify plaintiff of the offer received through Scott or his acceptance of it, but afterwards returned the \$500 to the purchaser introduced by plaintiff.

Held, that defendant had accepted the sale negotiated by plaintiff and, as the purchaser produced by him was ready and willing to complete the purchase, plaintiff had earned his commission, and that there was nothing in the letter above quoted to make it a condition precedent that the plaintiff should get the consent of, or consult with, the other agent.

The title to the land was in defendant's father, and defendant had told plaintiff that the land was his father's; but defendant had a power of attorney to sell and convey the land, and the Court found that, in the dealings between plaintiff and defendant, the latter was contracting on his own behalf with the plaintiff and knew that the plaintiff looked to him to pay the commission if earned, and

Held, that defendant had made himself personally liable for the plaintiff's commission. Story on Agency, at pp. 206 and 509; *Jones v. Littledale*, 6 A. & E. 490; Evans on Principal and Agent (Am. Ed.), p. 370; and *Ex parte Hartop*, 12 Ves. 352, applied.

Daly, K.C., for plaintiff. *Howell*, K.C., and *Mathers*, for defendant.

Full Court.]

GILMOUR v. SIMON.

[June 9.

Specific performance—Principal and agent—Evidence to prove authority of agent to sell land—Implied powers of real estate agent—Appeal from trial judge's findings.

Appeal from judgment of PERDUE, J., ordering specific performance of an agreement of sale of land signed on behalf of