

made by plaintiff personally, and is certainly broad enough to include, as no doubt intended, any sale whatever by whomsoever made.

The consideration, moreover, is for registering defendant's real estate in his real estate register which plaintiff did, and not for the sale. The commission was only payable when a sale was effected. The concluding words are also of some force: "If, however, the property does not sell no commission will be charged." If we were to adopt defendant's contention that some words like the following should have been used, "if, however, he does not sell," but this was carefully and no doubt designedly avoided.

It may be that defendant did not clearly appreciate the scope of the language in the contract but that will not avail him when no fraud or misrepresentation is set up.

The authorities cited by the learned Judge in support of his judgment are all valuable in ordinary cases where there is no special contract such as we have here, but are not pertinent to the question before us on this appeal.

In my opinion the appeal must be allowed, and judgment below reversed and entered for the plaintiff for \$120, with costs of trial and this appeal.

RUSSELL, J.:—I think the evidence of conversations was properly excluded. If there is any ambiguity it is patent on the face of the writing, not latent. The question to be decided is simply as to the construction of the writing. The facts may well be taken into consideration that the plaintiff was advertising farms all over the province and in other countries as well, and the defendant contemplated a benefit from this wide advertisement of his farm. If, in consequence of this advertisement, a number of persons should become interested in the farm and one of them should buy from the defendant directly, the sale would be due to the plaintiff's expenditures and exertions, and the latter might therefore very reasonably stipulate for a commission in the event of any sale whatever, whether made by himself as agent, or by the owner directly.

It seems fair also to remember that in the greater number of cases the purchaser would deal with the owner directly. He would not wish to buy a property without seeing it, and he would naturally wish to chaffer with the owner as to the price. In such cases, which it is fair to assume would at least be very frequent, the plaintiff would have brought