

that, in the circumstances of this case, any question arises under the Statute of Frauds.

The plaintiff is suing as upon an executed contract, and produces indisputable evidence of its terms. He claims commission (a) upon sales effected by himself and his agents; (b) upon sales in the town of Orillia in which the defendant intervened, which the plaintiff was entitled to have, and on which he would have earned commissions. I think he is entitled to recover under both these headings: *Burchell v. Gowrie and Blockhouse Collieries Limited*, [1910] A.C. 614, at p. 226. It was, I think, intimated by counsel that they might be able to adjust the account if I decided upon the basis of liability. If this cannot be done, there must be a reference to take the account.

But it is proper that I should deal specifically with the sale of 5,800 shares of stock to Allan Macpherson at 34½ cents per share. I think Macpherson lived in Orillia at the time of sale; and, if he did, the sale to him would be covered by what I have already said, whether it was directly effected by the plaintiff or not. He was evidently a resident of Orillia when examined *de bene esse* on the 10th May, 1913. But a great deal of evidence, pro and con, was directed to the question of whether this is to be treated as a sale by the plaintiff or not, and I propose to determine this question as a matter of fact. The sales, actual and contingent, to Macpherson, were completed by the defendant personally. It was the mere accident of ill health that prevented the plaintiff from being present upon that occasion. The defendant was at the plaintiff's house over night, and the two were to go together to Macpherson that morning. The plaintiff furnished the horse that conveyed the defendant. It is true that the defendant and Macpherson had accidentally met a long time before, and the defendant had spoken of the mine, but it was not followed up, and nothing came of it. The plaintiff was the means of bringing Macpherson and the defendant together as *purchaser and vendor*; he was the active negotiator, furnished the samples which in the end convinced Macpherson—and I find that it was the plaintiff's samples which were assayed—he was in every sense the efficient cause of the sale, and is entitled to a commission, whether Macpherson was or was not then living in Orillia: the *Burchell* case; *McBrayne v. Imperial Loan Co.* (1913), 28 O.L.R. 653; *Stratton v. Vachon* (1911), 44 S.C.R. 395; *Como v. Herron* (1913), 49 S.C.R. 1, at pp. 8, 9.

The writing defines the rate of compensation upon sales made at par, and, as it is not pretended that there was any variation