

with the purchaser, obtained payment of portions of the purchase money, and took the negotiations out of the hands of the plaintiff. In the present case, the bargain being for payment of commission only upon the purchase money to the extent of the \$3,000,000 being received by the defendant, it seems to me he need only shew he did not receive it, and that the sale went off through no fault of his.

The evidence is not at all clear as to why the sale did not go through. The inspection of the mine was said to have been satisfactory, and it was also said the people behind Von Hogen were willing to furnish the money. However, it was not paid or tendered to the defendant, and the defendant having in no way by any conduct of his rendered the efforts of the plaintiffs abortive, the case falls within the principles of *Sibbald v. Bethlehem Iron Co.*, 83 N. Y. 378, referred to in *Adamson v. Yeager*, 10 A. R. 477.

I think, however, in view of the circumstances and of the fact that the defendant obtained \$10,000 by reason of the efforts of the plaintiffs, I shall not offend against the rule by withholding costs in dismissing the action.

Action dismissed without costs.

OCTOBER 10TH, 1907.

DIVISIONAL COURT.

SIMPSON v. T. EATON CO.

Easement — Light — Obstruction of Access of Light to Windows of Dwelling-house — Inconvenience — Injunction — Delay in Applying — Estoppel — Damages — Reference — Costs.

Appeal by plaintiff from judgment of BRITTON, J., ante 215.

The appeal was heard by BOYD, C., MAGEE, J., MABEE, J.
A. H. Marsh, K.C., for plaintiff.
G. F. Shepley, K.C., for defendants.