

## APPELLATE DIVISION.

APRIL 7TH, 1913.

**STRONG v. LONDON MACHINE TOOL CO.**

4 O. W. N. 1062.

*Principal and Agent—Commission—Concluded Agreement Repudiated by Purchaser—Alleged Misrepresentation—Agreement for Commission Based on Voided Agreement—Later Sale — “Introduction”—Necessity of—Quantum Meruit.*

Action by an agent to recover commission upon the sale of the assets of defendant company to another corporation. Defendant company's officers were anxious to sell their concern and retained plaintiff to endeavour to negotiate a sale to the ultimate purchasers, a merger of a number of similar businesses in various parts of the country. It was understood that plaintiff should have a commission, but the amount was not definitely fixed. Plaintiff interested officials of the purchasers, with whom he was acquainted, and negotiations took place looking to the purchase. An agreement eminently satisfactory to defendants, based on a valuation of their assets, was proposed and a memorandum then drawn up between plaintiff and defendants' chief officer which provided for a liberal commission on this basis and a contingent interest of 20 per cent. in any price obtained above such figure. Finally an agreement was prepared and executed by both vendors and purchasers substantially along the lines proposed, and plaintiff went to England, believing the transaction consummated. Later, the purchasers repudiated the agreement, claiming that they had been deceived as to the assets, defendants were advised by counsel they could not enforce it, and, finally, owing to financial pressure, defendants were forced to sell out to the purchasers at a price greatly below that set out in the agreement executed. Plaintiff then claimed his full commission, on the ground that he was not responsible for the invalidity of the prior agreement, and defendants repudiated all liability on the ground that the conditions as set out in the memorandum between plaintiff and themselves, had not eventuated.

MIDDLETON, J., *held*, 23 O. W. R. 592, that the sale first proposed having fallen through, the agreement between the parties dependent thereon also came to an end, but that plaintiff, having set on foot the negotiations which led to the ultimate sale, was entitled to remuneration for his efforts as on a *quantum meruit*, which sum he fixed at \$5,000.

“It is not necessary that an agent actually ‘introduce’ the parties, if he actually sets in motion the forces which later result in the sale.”

Judgment for plaintiff for \$5,000 and costs.

SUP. CT. ONT. (1st App. Div.) dismissed appeal from above judgment with costs.

[See *Burchell v. Govrie*, C. R. [1910] A. C. 250.—*Ed.*]

Appeal by defendant from the judgment of HON. MR. JUSTICE MIDDLETON, 23 O. W. R. 592; 4 O. W. N. 593, after the trial before him without a jury at Toronto on the 3rd day of that month of an action to recover a commission upon the sale of the assets of the defendant company to the Canada Machinery Corporation.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH,