

Land agents were severally employed to sell an estate. A person called on one of the agents to inquire after another estate, and was told by him that it was not in the market, but that the estate above first mentioned was to be sold. The enquirer took from this agent particulars of the estate and afterwards meeting the other agent negotiated with him the terms of the purchase which was afterwards completed. The agent first approached brought an action for commission on the sale, payable to the agent who found the purchaser. It was held (1) that the question for the jury was, whether they thought that, in fact, the plaintiff had secured the purchaser and (2) that if they thought he had, and gave their verdict for them, they were not bound to give him the full amount of the commission, though the fact of that commission being usually paid was some evidence to guide them in their decision: *Murray v. Currie*, 7 Car. & P. 584.

The Right to Commission as Affected by the Taking of a Secret Profit by the Agent.

Where the agent negotiated with a person who was anxious to buy but wanted time to arrange for funds and the agent gave him time upon his promise to pay the agent a certain sum of money and the sale was finally made to him. It was held in an action by the agent for his commission brought before he had received the money promised him by the purchaser that his consent to accept such sum from the purchaser was such a breach of his duty as agent for the vendor as to disentitle him to recover his commission: *Manitoba and North West Land Corporation v. Davidson*, 34 Can. S.C.R. 255, reversing *Davidson v. Manitoba North West Land Corporation*, 14 Man. L.R. 233. The language of Mr. Justice Nesbitt in delivering the opinion of the Court is such a clear and concise statement of the principles governing cases where the agent by some service to the purchaser against the interest of his principal attempts to obtain a secret profit on the sale as to merit quotation in full. "I think that the non-receipt of the money makes no difference; the bargain was that he should get the money and it is that which would affect the mind of Davidson (the agent); he expected to get the money at the time and the question is: Does such a transaction as this disentitle him to the payment of his commission assuming that he is otherwise entitled to such a commission? I think the test is: Has the plaintiff by making such an undisclosed bargain in relation to his contract of service put himself in such a position that he has a temptation not faithfully to perform his duty to his employer? If he has, then the very consideration for the payment for his services is swept away. I think that the making of such a bargain necessarily put Davidson in a position where it was to his interest that Grant should become the purchaser, in which case he would receive not only the commission but \$500 commission as a secret profit. It put him in a position where he was getting pay for the very time which the company were agreeing to pay him for while securing the purchaser, and his duty as agent was to get the highest price possible for his employer;