

If the vendor should be unable to make title in accordance with the terms of the agreement, the plaintiff should recover the moneys paid on account of the purchase, with interest, and the damages allowed by the trial Judge.

The plaintiff should have the general costs of the action referable to the issue as to conversion; such costs to be taxed on the proper scale without set-off. The costs of the reference and further directions should be reserved until after report. There should be no costs of the appeal.

*Appeal allowed in part.*

FIRST DIVISIONAL COURT.

DECEMBER 6TH, 1918.

MEADE v. GEORGE McLAGAN FURNITURE CO.

*Principal and Agent—Agent's Commission on Sale of Goods—Travelling Salesman—Agency Agreement—Construction—Commission on Orders from Persons in Salesman's Territory—Order from Person from whom Previous Order Obtained by Salesman—Evidence—Findings of Trial Judge—Appeal.*

Appeal by the plaintiff from the judgment of MIDDLETON, J., at the trial, dismissing the action, which was brought for an account of sales and for the recovery of a sum of money as commission on sales of shell-boxes.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ. A.

I. F. Hellmuth, K.C., and J. P. MacGregor, for the appellant.  
R. S. Robertson, for the defendants, respondents.

FERGUSON, J. A., read the judgment of the Court. He said that the appellant urged that, upon the proper construction of the correspondence, read in the light of the surrounding circumstances as adduced in evidence, and upon the proper view of the evidence, it should be found (1) that, no matter who secured them, the plaintiff is entitled to be paid a commission on all orders for shell-boxes which were received by the defendants from persons, firms, or corporations residing or having their head office in the territory allotted to him as travelling salesman for the defendants' furniture; (2) that, because the plaintiff secured in August a contract for 10,000 boxes, in reference to the performance of which contract the Shell Committee by letter, dated the 10th September, wrote making inquiries, and that letter was to some extent instru-