
Province of Ontario.

HIGH COURT OF JUSTICE.

Clute, Latchford and Sutherland, JJ.]

[March 8.]

RICH v. GALBRAITH.

Principal and agent—Commission on sale of land—Parties brought together by agent—Sale affected by vendor.

Appeal of plaintiff from a judgment of Denton, Co.J., Co. York, dismissing an action brought to recover commission by an agent for the sale of land. The plaintiff brought the property to the attention of a person who subsequently became the purchaser, but the sale was actually effected by the defendant. It was found upon the evidence that the sale would not have been brought about, but for the fact of the introduction.

The trial judge found for the defendants on the authority of *Locators v. Clough*, 17 Man. L.R. 659 (C.A.), where Phippen, J.A., held that a mere introduction of the property to the purchaser without the agent endeavouring to negotiate or in fact negotiating the sale is not an earning of an agreed commission.

Held, dissenting from the above judgment, that where the agent brings the parties together and a sale is effected by his intervention the commission is payable, notwithstanding the fact that the vendor carried on the negotiations with the purchaser without the assistance of the agent and without the knowledge that the agent had been instrumental in bringing the parties together.

Kilmer, K.C., for appellants. *J. J. Maclellan*, for respondent.

[NOTE.—The above cases might perhaps be distinguished; but the finding of Mr. Justice Phippen is, in our opinion, in view of the requirements of modern business practices in reference to the sale of land by agents one that ought to be followed rather than the judgment of the Ontario court; and in matters of this kind judge made law is very desirable. In fact there would seem to be no protection against the ingenious schemes of unscrupulous agents for securing commissions except the rule that they should not be collectable unless the agent could produce a written authority therefor.—Ed. C.L.J.]