

FIRST DIVISION COURT, MIDDLESEX.

MACBETH, Co. C.J.

MAY 30TH, 1913.

MOODY v. KETTLE.

Principal and Agent—Agent's Commission on Sale of Land—Introduction of Purchaser by Agent—Purchase from Principal of a Different Property from that which Agent Employed to Sell.

Action by an estate agent for commission.

G. S. Gibbons, for the plaintiff.

T. H. Luscombe, for the defendant, cited Cronk v. Carman (1911), 2 O.W.N. 1027 (D.C.), as to the necessity for a contractual relationship.

MACBETH, Co. C.J.:—The defendant agreed to pay a commission to the plaintiff (who is a real estate broker) if the plaintiff sold for the defendant a coal-yard on Maitland street owned and occupied by the defendant.

The plaintiff introduced one Mathews as a prospective purchaser of this coal-yard; but, after examining the property in the defendant's company, Mathews declined to buy it. The defendant then offered to sell a smaller yard on Hill street, which had been leased to a tenant, but was then vacant. I have already found as a fact that the defendant did not at any time engage the plaintiff to sell the Hill street yard.

About six weeks afterwards, Mathews, in partnership with the former tenant of the defendant, took from the defendant a lease of the Hill street yard, with an option of purchase, and in January, 1913, bought the property for \$1,925.

The plaintiff sues for a commission on the purchase-money of the Hill street yard.

It seems to be a complete answer to his claim to shew that he was not at any time employed to sell the Hill street yard.

Starr Son & Co. v. Royal Electric Co., 30 S.C.R. 384, is somewhat like the present case. There the plaintiffs, who were agents for the sale of electrical machinery, having in view a prospective customer for an electric light plant, were authorised by the defendants to offer a certain specifically described plant for \$4,500; the customer refused to buy this plant, but subsequently purchased from the defendant a much smaller plant for \$1,800. It was held that the plaintiffs were not entitled to a commission on the sale of the smaller plant. Mr. Justice Sedgewick, at p. 386, says: "The right of the appellant company to a commission depended solely upon whether they had sold the specific machine described in the telegram," i.e., the plant priced at \$4,500.