

Co. Ct.]

KERSTEMAN ET AL V. KING.

[Co. Ct.]

*O'Brien* supported the rule. (1) All the services required of the plaintiffs, who were acting solely for defendant, were not performed, and they did not obey his instructions. The defendant repudiated the contract for sufficient reason. Story, ss. 8, 211, 329, 344; Evans, 325, 336, 342, 351. (2) There was misconduct and violation of duty on the part of plaintiffs, as agents of defendant, in taking any remuneration as commission or otherwise from the vendors, without the defendant's knowledge and consent: *Salmon v. Pender*, 3 H. & C. 642; *Morrison v. Thompson*, L. R. 9 Q. B. 480; *Raisin v. Clark*, 41 Maryland Rep. 158; 10 Am. Law Rev. 363; and see Wharton, 336, Evans, 345, Bishop, 337, Snell, 457, 466.

MACKENZIE, Co. J.—It looks something like this, that the plaintiffs were charging the vendors \$150 commission for getting a purchaser for the property in question, and claimed \$150 commission from the defendant as purchaser. They were to get a commission from the one party for one thing, and from the other party for another thing, in respect to this property.

In *Salmon v. Pender*, 3 H. & C. 636, the Court of Exchequer held that an agent employed to sell land in which he was interested as a shareholder, was entitled to no commission from his employer in respect of the sale. *Morrison v. Thompson*, L. R. 9 Q. B. 480, has also been referred to. In the American case of *Raisin v. Clark*, 41 Maryland Rep. 158, the plaintiff, a real estate broker, was employed by one Cooper to sell a farm. He advertised it, and the defendant, seeing the advertisement, applied to him, and proposed to exchange for the farm a house in the city. The exchange was made, and the plaintiff received from Cooper his commission of two and a-half per cent., of the value of the property exchanged. He demanded a like commission from the defendant, and brought the action to recover it. This claim was placed upon two grounds: (1) An express agreement with defendant; (2) An alleged usage among brokers in Baltimore to charge each party, upon exchange of real estate, a commission of two and a-half per cent. The Court of Appeal

held that he was not entitled to recover upon either of these grounds. It being conceded that he was Cooper's agent to sell the farm, and that the alleged agreement, if made at all, was entered into while this employment continued, he could not lawfully become the agent of the purchaser. It is a general rule, that a person cannot, in an agency of this kind, act as agent or broker for both persons in the same transaction, because there is a necessary conflict between the two interests; and the law will not allow an agent of the vendor, while his employment continues, to assume the essentially inconsistent and repugnant relation of agent for the purchaser. In the present case, from the oral evidence and the letter of the plaintiffs of the 8th Feb. to the vendors, the plaintiffs were acting for the vendors, and charge them with "the usual commission which amounts to \$150. See also *Fawnsworth v. Hemmer*, 1 Allen 494 (Massachusetts Reports).

The present plaintiffs certainly acted for both parties, and claimed commission from both parties. The defendant, as already stated, swore that he understood that the plaintiffs were acting for him alone, and if he had supposed they were not doing that, he would not have employed them. The vendors have since become insolvent, whether that had anything to do with the subsequent action of the plaintiffs does not appear. It is questionable on the evidence if a purchase as directed by defendant has ever been effected in respect of the property in question. I think the plaintiffs are not entitled to recover a commission from the defendant under the circumstances of this case. The rule must be made absolute to enter a nonsuit.

*Rule absolute to enter a nonsuit.*

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## CORRESPONDENCE.

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### *Division Court Jurisdiction.*

To the Editor of THE LAW JOURNAL  
SIR,—In the December number of your valuable journal, you have given this sub-