

himself effected a sale for the amount \$5,500.00 and the trial judge held that the defendant acted as he had with the intention and design of preventing the plaintiff from making a commission.

Held, 1. The plaintiff was entitled to a commission in the amount of the sale.

2. Whilst the principal himself is not as a rule disentitled to sell if the sale be made in good faith and not a mere trick to defraud the agent, under the circumstances of this case an action would lie not for the commission, but for damages for breach of contract.

G. S. Gibbons, for plaintiff. *T. G. Meredith, K.C.*, for defendant.

Boyd, C., Teetzel, and Latchford, JJ.]

[May 27.]

RE STURMER AND BEAVERTON.

Municipal corporations—Local option by-law—Motion to quash—Residence—Constructive residence—Animus revertendi—Irregularities—Laches and acquiescence—Curative provisions of sec. 204 of Municipal Act.

Appeal by the applicant Henry Sturmer from the judgment of MIDDLETON, J., on a motion to quash a local option by-law.

BOYD, C.:—"Residence" is a word of flexible import, and as said in *Naef v. Mutter*, 12 C.B.N.S. 816, at p. 821, has a great variety of meanings according to the subject-matter and the objects and purposes of the legislature. In a poor-law case Blackburn, J., said: "I do not like the phrase 'constructive residence': when a person is physically absent for a time, if he has an animus revertendi, his residence continues; and the question in such a case is whether he continues to be resident, or has ceased to be resident by taking up his permanent residence elsewhere": *Regina v. Abingdon*, L.R. 5 Q.B. 406, at p. 409.

In a franchise case, *Ford v. Hart*, L.R. 9 C.P. 275, it is held that there may be a constructive residence where there is no actual residence, the person claiming in this way must have the liberty of returning, and also the intention of returning whenever he pleases. In a case of like character in the same volume, Brett, J., says: "It is true that when a person keeps the dominion over his house, and goes away for an indefinite time, with the intention of returning at an indefinite time, he may be con-