

pay a commission of $2\frac{1}{2}\%$ if and when the sale was completed; but that subsequently and before the sale was completed the Levy Co. notified him that they were the agents who had really brought about the sale and were therefore entitled to the commission of \$950.

The applicant admits that he had some conversation in September with the Levy Co. at their office in reference to a proposed buyer. Sometime before the Winyard Co. came into the matter—on the 11th January last the sale was completed. The applicant now finds two claimants for the commission and asks to be allowed interplead as to this.

The judgment in *Barber v. Royal Trust Co.*, 23 O. W. R. 31; 4 O. W. N. 91, (which was affirmed by Riddell, J., on 11th October last), shews that the application must be refused on applicant's admission of his promise to pay Winyard & Co. It may possibly be open to him to defeat their claim on the ground of misrepresentation as to their services, or that of the Levy Co. on the ground of no retainer by him. But it may be, as pointed out in the *Barber Case* and authorities there cited, that he is liable to both. Before committing himself to Winyard & Co. applicant should have taken an indemnity from them against any claim from Levy & Co. as was done in a case recently before me in Chambers.

The motion is dismissed with costs to Winyard & Co. fixed at \$20 unless applicant wishes a taxation. The Levy Co. does not ask for costs.

HON. MR. JUSTICE KELLY.

FEBRUARY 7TH, 1913.

RE SNELL AND DYMENT.

4 O. W. N. 759.

Deed—Assignment for Benefit of Creditors—Deed by Assignee—Knowledge and Assent of Creditors—Revocability—Limitations Act, 10 Edw. VII., c. 34—Vendor and Purchaser Application.

KELLY, J., *held*, upon a Vendor and Purchaser application that the creditors of one H. were not necessary parties to a deed made by H. and his assignee for creditors to one W.

An application under the Vendors' and Purchasers' Act.

The objection raised by the purchaser was that the creditors of William Hewitt were necessary parties to a convey-