

commission, at all events on the later date, although the balance of the purchase price was not, for some unexplained reason, then paid: *Lara v. Hill*, 15 C.B. (N.S.) 45.

Under an agreement an auctioneer and estate agent was to receive a commission if an estate should be sold, and, if not sold, he was to be paid a specified sum as a compensation for his trouble and expense. Where the agent after failure to sell on putting the property up at auction, was asked by a person attending the sale for the name of the owner of the property and referred him to his principal; and ultimately that person without any further intervention of the agent, became the purchaser, the sale was effected through the means of the agent and he was entitled to the stipulated commission: *Green v. Bartlett*, 14 C.B. (N.S.) 681, 32 L.J.C.P. 261, 8 L.T. 503, 11 W.R. 834.

The plaintiffs, who were auctioneers and land agents, wrote to the defendant, who was also an auctioneer and land agent, that they were acting for a certain person in seeking a house in their neighbourhood, asking if he had any house on his books that would be suitable, and adding that they presumed the defendant would divide commission with the plaintiffs. The defendant replied giving particulars of a house and adding that in the event of business ensuing he would be pleased to share commission with the plaintiffs. Negotiations for that house fell through, but afterwards negotiations were entered into between such prospective purchaser and the defendant on behalf of the owner of another house, and these negotiations resulted in a contract for the sale of such house. The contract was signed by the defendant purporting to act for the owner, but in an action for specific performance the owner pleaded that the defendant had no authority to make the contract and the action was abandoned. The defendant then sued the owner for his commission and that action was settled, the owner paying the amount claimed. It was held that the plaintiffs were entitled to half the commission so recovered by the defendant from the owner: *Bell v. Carter*, 16 Times L.R. 240.

In the following additional cases the agents were allowed to recover their commission: *Duck v. Daniels*, 7 W.L.R. 770 (B.C.); *Buckworth v. Nelson*, 8 W.L.R. 43, 9 W.L.R. 490 (B.C.); *Cunningham v. Hall*, 17 W.L.R. 497 (B.C.); *Schuchard v. Drinkle*, 1 Sask. L.R. 16; *Gartney v. Oleson*, 3 W.L.R. 80 (Sask.); *Monsees v. Tait*, 4 W.L.R. 322 (Sask.); *Scott v. Benjamin*, 2 W.L.R. 528 (N.W.T.).

Total or Partial Failure of Claim to Compensation.

An agent taking upon himself a position incompatible with his duty to his principal, is not entitled to be paid for his services, and, therefore, where an owner of land, by his single writing, authorized either one of two agents to sell or exchange his land and in the writing stipulated to pay a commission to the one affecting the sale or exchange, no commission is recoverable by one of the agents for affecting an exchange of the land of his principal for land belonging to the other agent, especially where