

bring such an action until that time arrived: *Wardell v. Trenouth*, 24 Gr. 465. Specific performance is not the appropriate remedy unless the whole agreement can be executed: *Fry on Specific Performance*, 358.

*Hudson*, for plaintiffs. *Kilgour*, for defendant.

Mathers, J.] *HUGHES v. HOUGHTON LAND CO.* [Jan. 13.

*Principal and agent—Commission on sale of land—Vendor ignorant that purchaser sent by plaintiff.*

In this case the defendants sold the land to a purchaser sent to them by one Burke, acting on behalf of the plaintiff, a real estate agent, who had been authorized to find a purchaser, and had been one of about 50 agents similarly authorized, each of whom had been furnished with a typewritten statement describing in detail the property, the price and terms. Defendant's manager, who made the sale, inquired of the purchaser, who produced one of the statements, where he got it. The purchaser said in a north end hotel. The manager then asked him if he came from any real estate agency, and he said "No." The manager, then, believing that no commission would have to be paid to an agent, made an abatement from the price quoted to the plaintiff of an amount slightly in excess of what the commission would have been.

The purchaser had not got the statement from the plaintiff directly, but through Burke, who was not a real estate agent, but who had, to the knowledge of defendants' manager, been employed by the plaintiff to assist in making the sale and furnished with copies of the statement, and had also been directly authorized by the manager to find a purchaser. The purchaser had not intentionally deceived the defendants' manager in his answers.

The defendants, therefore, according to the decision in *Locators v. Clough*, 17 M.R. 659, would not have been liable for a commission to the plaintiff, unless there were circumstances that put their manager upon inquiry, so as to bring the case within the principle of *Lloyd v. Matthews*, 51 N.Y. 194, and unless the inquiries actually made were sufficient.

*Held*, that the circumstances were such as to put the defendants' manager upon inquiry and that the inquiry made was