

1908

*Oct. 12.
*Nov. 10.

BRIDGMAN v. HEPBURN.

Sale of land—Principal and agent—Commission for procuring purchaser—Sale to person introduced by broker.

APPEAL from the Supreme Court of British Columbia (1) affirming the judgment of Irving J. which dismissed the appellant's (plaintiff's) action with costs.

The respondent, defendant, applied to the appellant for a loan of \$58,000, but negotiations to that end and for the sale of certain lands for \$56,000 failed. Subsequently the person with whom the appellant was negotiating was introduced by the prospective purchaser's banker to the agent of the mortgagees, and a sale was brought about for \$50,000, the respondent paying the agent a commission. An action by the appellant for a commission for having procured the purchaser was dismissed by Irving J. at the trial and his judgment was affirmed by the judgment appealed from, Morrison J. dissenting, and it was held that as the appellant had been engaged to find a purchaser at a certain price and having failed to do so he was not entitled to a commission on the sale subsequently made to the person originally introduced by him at a lower price. It was held by Hunter C.J. that when, *prima facie*, the agreement is to pay a commission on a named price it is for the agent to shew in the clearest way that the intention of the parties was to pay a commission on any sum at which a sale might be effected.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, MacLennan and Duff JJ.

After hearing counsel for the parties on the appeal, the Supreme Court of Canada reserved judgment and, on a subsequent day, dismissed the appeal with costs.

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Appeal dismissed with costs.

Bodwell K.C. for the appellant.

Ewart K.C. for the respondent.