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 \*May 2.  
 \*June 12.

JOHN STARR, SON AND COM- } APPELLANT;  
 PANY (PLAINTIFF) . . . . . }

AND

THE ROYAL ELECTRIC COMPANY } RESPONDENT.  
 (DEFENDANT) . . . . . }

ON APPEAL FROM THE SUPREME COURT OF NOVA  
 SCOTIA.

*Principal and agent—Sale by agent—Commission—Evidence.*

The appellant company deal in electrical supplies at Halifax and have at times sold goods on commission for the defendant, a company manufacturing electric machinery in Montreal. In 1897 the appellant telegraphed the respondent as follows:—"Windsor Electric Station completely burned. Fully insured. Send us quotations for new plant. Will look after your interest." The reply was:—"Can furnish Windsor 180 Killo Watt Stanley two phase, complete exciter and switchboard, \$4,900, including commission for you. Transformers, large sizes, 75 cents per light." \* \* \* The manager of appellant company went to Windsor but could not effect a sale of this machinery. Shortly after a travelling agent of the Independent Company came to Halifax and saw the manager and they worked together for a time trying to make a sale but the agent finally sold a smaller plant to the Windsor Company for \$1,800. The Starr Company claimed a commission on this sale and on its being refused brought an action therefor.

*Held*, affirming the judgment of the Supreme Court of Nova Scotia, Gwynne J. dissenting, that the Starr Company was not employed to effect the sale actually made; that the Montreal Company offered the commission only on the sale of the specific plant mentioned in the answer to the request for quotations; and that there was no evidence of any course of dealing between the two companies which would entitle the Starr Company to such commission.

\*PRESENT:—Sir Henry Strong C. J. and Taschereau, Gwynne, Sedgewick and King JJ.

APPEAL from a decision of the Supreme Court of Nova Scotia reversing the judgment at the trial in favour of the plaintiff.

The facts of the case are sufficiently stated in the above head-note and in the judgment of Mr. Justice Sedgewick on this appeal.

*Cahan* for the appellant.

*Belcourt Q.C.* for the respondent.

The judgment of the majority of the court was delivered by :

SEDGEWICK J.—In October, 1897, a fire occurred at Windsor, N.S., and the Windsor Electric Light Station was destroyed. On October 18th the appellant company, who carry on the business of dealers in electrical supplies, sent the following telegram to the respondent corporation, who are manufacturers of, and dealers in, electrical machinery in Montreal :

Windsor Electric Station completely burned. Fully insured. Send us quotations for new plant. Will look after your interest.

(Signed) JOHN STARR, SON & CO.

To this the respondent company replied by telegraph as follows :

MONTREAL, October 18th, 1897.

MESSRS. JOHN STARR, SON & Co.,  
Halifax, N.S.

Answering telegram. Can furnish Windsor one hundred and eighty Killowatt Stanley two phase, complete exciter and switchboard, forty-nine hundred dollars, including commission for you. Transformers, large sizes, seventy-five cents per light. Can make immediate shipment of generators and transformers. They can use generators for transmission scheme later.

(Signed,) THE ROYAL ELECTRIC CO.

This, in my view, was a specific offer by the Royal Company of one large machine of 4,000 lights and upwards, for the sum of \$4,900, including a commission for the Starr Company, and it was the only

1900  
THE  
STARR,  
SON AND  
COMPANY  
v.  
THE ROYAL  
ELECTRIC  
COMPANY.

1900  
THE  
STARR,  
SON AND  
COMPANY  
v.  
THE ROYAL  
ELECTRIC  
COMPANY.  
Sedgewick J.

authority the Starr Company had from the Royal Company in connection with furnishing new machinery for the Windsor Electric Light Station. Mr. Starr went to Windsor to endeavour to make a sale of this machinery, but signally failed. Afterwards, Mr. Ross, a travelling agent of the respondents, sold to the Windsor Company another, and different machine, of a much smaller make, for \$1,800, and under specific instructions as to price from the head office. This action was brought to recover \$180 as commission upon the price of the machine thus sold.

Much stress was laid upon an alleged course of dealing which, previous to the correspondence above mentioned, had taken place by correspondence between the two companies, and it was sought to make this alleged course of dealing a part of the contract in respect of which commission was claimed. But although the trial judge found there was a course of dealing as alleged the evidence completely failed to establish it, and the court upon appeal so determined.

The Starr Company further contended that they were entitled to a commission in consequence of a contract which their travelling agent had made with them prior to the actual sale. But there was no evidence whatever given to prove any authority on the part of the travelling agent to make any bargain whatever with the Starr Company. That also the court below found. The judgment of the court below was therefore right. The right of the appellant company to a commission depended solely upon whether they had sold the specific machine described in the telegram of October 18th. They did not sell that machine, or anything in character like it, and therefore their right to commission failed.

I need not discuss more fully the evidence, which has been fully dealt with in the judgment of Mr.

Justice Townshend, a judgment in which I entirely concur. The appeal should be dismissed with costs.

GWYNNE J. (dissenting).—The judgments of the learned trial judge and of Mr. Justice Graham in the Supreme Court of Nova Scotia, in affirmation thereof are, in my opinion, free from objection. The defendants are manufacturers at Montreal of electric plant designated by the term “Stanley Apparatus.” The plaintiffs are a company doing business at Halifax as agents or intermediate dealers in electric plant between the manufacturers and purchasers of such plant. In a letter dated the 8th May, 1895, the plaintiffs as such intermediate dealers applied to the defendants and asked for particulars and specifications of their “Stanley apparatus” electric plant, and tendered their services in effecting sales thereof for the defendants. In reply to this letter the defendants on the 13th of May, 1895, wrote a letter to the plaintiffs in which they express themselves ready to accept offers for their Stanley plant at prices named for several classes then manufactured by them at the respective prices in the letter attached to each class, and they assure the plaintiffs that in working for orders for them they should have the protection of the defendants upon the terms therein stated which were that the defendants should be informed of the parties with whom the plaintiffs should be in treaty and should be kept advised of the progress of the plaintiffs’ negotiations. No direct transactions between the defendants and purchasers with whom the plaintiffs were in treaty took place, but many transactions took place of sales effected for defendants of their plant to divers parties by and through the plaintiffs, who out of the purchase monies passing from the purchasers, through their hands, to the defendants, the plaintiffs were authorized by

1900  
 THE  
 STARR,  
 SON AND  
 COMPANY  
 v.  
 THE ROYAL  
 ELECTRIC  
 COMPANY.  
 Gwynne J.

1900

THE  
STARR,  
SON AND  
COMPANY

v.

THE ROYAL  
ELECTRIC  
COMPANY.

Gwynne J.

the defendants to retain and did retain the sum of ten per centum on the amount of purchase money agreed upon by the defendants as remuneration to the plaintiffs for their services as intermediate dealers.

In October, 1897, the whole of the plant of a company doing business at Windsor, Nova Scotia, under the name of the Windsor Electric Co. was utterly destroyed by fire. In a telegram of the 18th October, 1897, the plaintiff communicate from Halifax this fact to the defendants at Montreal, and say "Send us quotations for new plant; will look after your interest."

The defendants reply by telegram on same day and furnish particulars of an improved plant of a higher class and cost than any of those already mentioned in defendants' letter to plaintiffs of 13th May, 1895.

Thereupon the plaintiffs immediately proceed to Windsor and enter into negotiations with the Windsor Electric Company for the defendants to supply all the electric plant they should require, and urged them to put up the defendants' "Stanley apparatus," and particularly urged them to take that specified in the defendants' telegram of the 18th October. On the 20th of October, 1897, they communicated to defendants what they had done in the matter in their interest. Shortly afterwards the defendants sent their own foreman, one Ross, to Halifax to see the plaintiffs and to assist them in their negotiation with the Windsor Electric Company. Ross informed the plaintiffs of the purpose of his arrival being to assist the plaintiffs and the plaintiffs took him to the Windsor Electric Company to whom (being informed by the president of that company, that they did not wish to pay a price which should include commission to any one) Ross, in the plaintiffs' absence, stated that the plaintiffs had no authority to act as agents on behalf of the defendants and notwithstanding his assurance to the

plaintiffs that he came to assist them in their negotiation, and that whatever he did would be in the interest of the plaintiffs, upon the faith of which assurance the plaintiff, John Starr, returned to Halifax, and in his absence Ross proceeded to carry on the negotiation initiated by the plaintiffs which terminated in the defendants closing the negotiation with the Windsor Electric Company for the sale to them not of plant of the class mentioned in the telegram of the 18th of October but of one of the smaller classes of the defendants' manufacture, and at the sum of eighteen hundred dollars. It is for commission upon this sale that the action is brought, and the defendants not disputing the reasonableness of the amount if they are liable, repudiate all liability. The learned trial judge has found the facts to be as above stated, and that it was not competent for the defendants so to interfere with the negotiations initiated by the plaintiffs, and he estimated the amount of the remuneration to which they are entitled at 10 per cent upon the amount of purchase money proceeding upon the basis of all the transactions which had taken place between the defendants and the plaintiffs since the letter of 13th May, 1895. In this judgment I can see nothing which can be objected to. There is no foundation I think for the contention that the plaintiffs' powers of negotiation and their right to be remunerated was limited to the sale of the particular plant mentioned in the telegram of October. That plant being placed in the hands of the plaintiffs appears to me to have been simply an addition to the plant named in the letter of the 13th May, 1895, and all were placed in the same position as to the plaintiffs negotiating for sales. No amount of commission was specified in respect of the plant named in the telegram of October, 1897, or in respect of that named in the letter of May, 1895, and the evidence

1900  
 THE  
 STARR,  
 SON AND  
 COMPANY  
 v.  
 THE ROYAL  
 ELECTRIC  
 COMPANY.  
 Gwynne J.

1900  
THE  
STARR,  
SON AND  
COMPANY  
v.  
THE ROYAL  
ELECTRIC  
COMPANY.  
—  
Gwynne J.

being clear that the plaintiffs entered upon negotiations with the Windsor Electric Company upon behalf of the defendants, and with their authority had no right whatever to interfere in any manner to prevent the negotiations initiated by the plaintiffs being brought to a close by them without adequately remunerating the plaintiffs for their services, and as there is no dispute as to the amount of the remuneration to the plaintiffs if the defendants are liable for any amount, I am of opinion that the appeal should be allowed with costs and the judgment of the learned trial judge restored.

*Appeal dismissed with costs.*

Solicitors for the appellant: *Harris, Henry & Cahan.*

Solicitors for the respondent: *Drysdale & McInnes.*

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