

TALLEY *v.* TUGGLE.

Opinion delivered June 8, 1931.

**BROKERS—RIGHT TO DIVISION OF COMMISSIONS.**—In an action to enforce an agreement to divide brokers' commissions in the sale of certain real estate, it is immaterial that plaintiff, being at the time of sale a regularly licensed real estate broker, was not at the time of the agreement a licensed salesman of defendant.

Appeal from Garland Circuit Court; *Earl Witt*, Judge; affirmed.

## STATEMENT BY THE COURT.

This appeal is prosecuted from a judgment against appellant for a division of commissions earned in the sale of certain real estate with appellee, a real estate broker.

It appears from the record that appellee was a regularly licensed real estate broker in the city of Hot Springs with appellant named and licensed as one of his salesmen, and that during this time certain properties were listed with appellee company for sale. That appellant quit the employment of appellee in November, 1929, and continued in the real estate business on his own account; the testimony showing that it was agreed when he left the employ of appellee that if sales were

made of four certain pieces of property, about which there had been some negotiations, the commissions should be divided equally between appellant and appellee. The sale of these particular pieces of property was effected by appellant, and suit was brought for appellee's part of the commissions thereon.

Appellant denied having made any agreement to divide the commissions earned from the sale of this property with appellee, but three witnesses testified that such was the fact, as the jury found it to be. Appellant denied liability on his part to the payment of the commissions to appellee, because he was not a licensed salesman of appellee at the time of any such agreement.

It was shown also that appellee had procured his city license last half of 1929 as a real estate broker.

Appellant complained of the court's failure to give an instruction asked and prosecutes this appeal from a judgment rendered upon the verdict of the jury against him.

*S. W. Garratt*, for appellant.

*Walter J. Hebert*, for appellee.

KIRBY, J., (after stating the facts). It can make no difference, as to the liability of appellant upon his contract for a division of the commissions with appellee, broker, that he was not at the time of such agreement a licensed salesman of appellee, in whose employ he had been when the property was listed with appellee for sale and negotiations begun therefor. The jury found, on conflicting testimony, that he had agreed to divide the commissions on an equal basis at the time of quitting the employ of appellee, in case he should make the sale of certain property, which it is admitted that he afterwards effected; and it is unimportant whether he had a license as a salesman for appellee at the time of such agreement, or a license on his own account or any license at all, since he was duly licensed at the time he perfected the sales and earned the commissions.

Appellee was a regularly licensed real estate broker, and could, of course, make a sale of any of his property

listed through any individual dealer or salesman, so far as he was concerned, and becomes entitled to whatever commissions were agreed to be paid by such salesman.

There is nothing inherently unlawful in the carrying on a brokerage business, and there is no intimation in the testimony of contemplated violation of any law or affecting the sales through an unlicensed salesman when the agreement for division of the commissions was made. *Engles v. Blocker*, 127 Ark. 385, 192 S. W. 193.

This is all that was done in this case, and the testimony is amply sufficient to support the verdict. Neither do we find any error in the giving or refusal to give instructions, and the judgment will be affirmed. It is so ordered.

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