

Summergreene v Parker (1950) 80 CLR 304

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Facts

- Parker, an estate agent, sued Summergreene for commission for effecting the sale of the defendant's business carried on by her under the name "The Dyeing King."
- The proceeding were before Maxwell J, and in answer to a question submitted to them the jury found that the defendant promised the plaintiff £500 commission if he effected a sale of her business.
- This was predicated on the existence of two documents which were purported to have been signed on behalf of The Dyeing King by Parker, which stated (among other things) the following:
 - "On behalf of Messrs. A O Anderson and H P Jones the Trustees on behalf of a Company to be formed and known as 'The Dyeing King Pty Limited' we hereby offer to purchase from you the business presently carried on by you under the name of 'The Dyeing King' at 53 Northumberland Road, Auburn and elsewhere upon a walk-in walk-out basis including all the assets of the said business (except the freehold property) as disclosed to the Company's investigators..."
 - "I acknowledge receipt of a letter from Messrs F J Church & Co on your behalf offering to purchase the business presently carried on by me under the name of 'The Dyeing King' and I hereby accept the offer to purchase on the terms enumerated in the said letter."

Issues

- Whether the letters effected a sale of Summergreene's business by Parker?

Held

- It was held that Parker clearly did not effect a sale of a business because the company never came into existence.
- Reference was made by Latham CJ to the following statement quoted from *May & Butcher Ltd v The King* (1934) 2 KB 17, at p 21 where Viscount Dunedin said:
 - ". . . to be a good contract there must be a concluded bargain, and a concluded contract is one which settles everything that is necessary to be settled and leaves nothing to be settled by agreement between the parties. Of course, it may leave something which still has to be determined, but then that determination must be a determination which does not depend upon the agreement between the parties."
- Unlike in *Kelner v Baxter*, there were also still multiple details to be determined upon the business' formation. There was no concluded agreement between the parties as to what the terms of any sale were to be.

Quotes

"I do not myself think that *Kelner v Baxter* (1866) LR 2 CP 174 or any of the cases cited affords any assistance in the present case. Where A, purporting to act as agent for a non-existent principal, purports to make a binding contract with B, and the circumstances are such that B would suppose that a binding contract had been made, there must be a strong presumption that A has meant to bind himself personally. Where, as in *Kelner v Baxter* (1866) LR 2 CP 174, the consideration on B's part has been fully executed in reliance on the existence of a contract binding on somebody, the presumption could, I should imagine, only be rebutted in very exceptional circumstances. But the fundamental question in every case must be what the parties intended or must be fairly understood to have intended. If they have expressed themselves in writing, the writing must be construed by the court."

(Fullager J at page 323)

Full Text

The full text is available here: <https://jade.io/summary/mnc/1950/HCA/13>

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