reach a different conclusion than Wisconsin using the same reasoning. However, it is entirely possible that the Georgia courts would not look at the method of release of the patient to determine the purpose of his confinement and the liability of his parents for his maintenance. It is possible that they would look at the method by which he was first committed. The patient was committed by a criminal court and the action was brought by the state. It was brought by the society against the individual. This is not a case of a civil commitment by a court of ordinary to which the statute for release refers. Hence, it may be possible for the Georgia court, in a similar situation, to hold the parents not liable.

It is the opinion of this writer that a significant question such as is presented here should not be left to speculation and conjecture. Whether an individual, after being found not guilty by reason of insanity and committed under a mandatory commitment statute, should be held liable for his maintenance in the mental institution is a question for the legislature which creates the law and not the courts which interpret it.

STEVE E. MOODY

REAL PROPERTY—BROKERS' COMMISSIONS—DEFAULT BY BUYER

The majority of the jurisdictions in the United States hold that when a real estate broker procures a customer who is accepted by the principal, and a valid, binding, or enforceable contract is drawn between them, the broker is entitled to his commission. This is true even though the customer fails or refuses to comply with the contract unless there is a provision making the commission conditional or contingent.[1] However, in the recent New Jersey case of *Ellsworth Dobbs, Inc. v. Johnson*,[2] the supreme court of that state repudiated the majority position. The case involved an action by a real estate broker to recover his commission. The purchaser, procured by the broker, and the vendor entered into an enforceable contract of purchase and sale, but the sale was never consummated due to the default of the purchaser, who was financially unable to perform. In deciding that the broker could not recover from the vendor, the court overruled a long line of New Jersey cases holding the majority position and adopted instead the following rule: "When a broker is engaged by an owner of property to find a purchaser for it, the broker earns his commission when (a) he

1. Kopf v. Milam, 60 Cal.2d 600, 387 P.2d 390, 35 Cal. Rptr. 614 (1963); Nickelsen v. Morehead, 238 Iowa 970, 29 N.W.2d 195 (1947); Story v. Gibbs, 309 S.W.2d 334 (Ky. 1958); Chamberlain v. Amick, 210 S.W.2d 528 (Mo. App. 1948); Retterer v. Bender, 106 Ohio App. 369, 154 N.E.2d 827 (1958); Kruger v. Wesner, 274 Wis. 40, 79 N.W.2d 354 (1956); Annot., 74 A.L.R.2d 437 (1960); 12 AM. JUR.2d *Brokers* §§204, 206 (1964); 12 C.J.S. *Brokers* §95 (b) (1938).
2. 50 N.J. 528, 236 A.2d 843 (1967).

produces a purchaser ready, willing and able to buy on the terms fixed by the owner, (b) the purchaser enters into a binding contract with the owner to do so, and (c) the purchaser completes the transaction by closing the title in accordance with the provisions of the contract."[3]

Following its earlier decision in *Tanner Associates, Inc. v. Ciraldo*,[4] the court held that the broker, however, might recover damages from the purchaser in case of default. The action would be based on an implied contract where, in consideration of the broker's locating property satisfactory to the purchaser, the latter would complete the contract with the vendor, thus allowing the broker to collect a commission from the vendor.

Prior New Jersey cases held that the broker earned his commission when he produced a buyer able and willing to meet the vendor's terms. This condition could be fulfilled by the signing of a binding contract by the vendor and purchaser.[5] The reasoning behind this rule was that the vendor "accepted" the purchaser, including his financial ability.[6] The parties could, however, specifically contract that the broker's commission was conditioned upon payment of the purchase price.[7]

In discussing the reasoning behind the new rule, the court stated, "[O]rdinarily when an owner of property lists it with a broker for sale, his expectation is that the money for the payment of the commission will come out of the proceeds of the sale."[8] If the title does not close due to the fault of the purchaser, then the broker has not earned his commission.

The court also stated that public policy required the new rule. Further, whenever a substantial inequality of bargaining power, position, or advantage appeared to the benefit of the broker, even an express provision in the broker's contract to the effect that the commission would be earned upon the signing of a binding contract between the vendor and purchaser would be deemed inconsistent with public policy and unenforceable.[9]

A very few other American jurisdictions have also rejected the majority position and hold that the broker does not earn his commission merely upon the signing of a binding, enforceable contract.[10] This is the position

3. *Id.* at ___, 236 A.2d at 855.
4. 33 N.J. 51, 161 A.2d 725 (1960); 114 U. PA. L. REV. 380 (1966).
5. Hedden v. Folio, 62 N.J. Super. 470, 163 A.2d 163 (App. Div. 1960); Winter v. Toldt, 32 N.J. Super. 443, 108 A.2d 648 (App. Div. 1954).
6. Courter v. Lydecker, 71 N.J.L. 511, 58 A. 1093 (Sup. Ct. 1904); Freeman v. Van Wagenen, 90 N.J.L. 358, 101 A. 55 (Sup. Ct. 1917).
7. Richard v. Falleti, 13 N.J. Super. 534, 81 A.2d 17 (App. Div. 1951).
8. Ellsworth Dobbs, Inc. v. Johnson, 50 N.J. 528, ___, 236 A.2d 843, 852 (1967).
9. *See* Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69, 75 A.L.R.2d 1 (1960), for the basis of the argument on "public policy."
10. The most noteworthy is Rhode Island. In Gartner v. Higgins, 214 A.2d 849 (R.I. 1965), the supreme court there reiterated its position that a broker, by presenting a potential purchaser, impliedly represents that he is financially able. Therefore, regardless of a contract of purchase and sale, the broker is not entitled to his commission if the purchaser proves to be financially unable to purchase in accordance with such contract. An exception is made to this rule, however, when the vendor does not rely on this implied representation but enters the contract after independent judgment of the customer's financial ability.

taken by the English courts as well.[11]

GA. CODE ANN. section 4-213 reads: "The broker's commissions are earned when, during the agency, he finds a purchaser ready, able, and willing to buy, and who actually offers to buy on the terms stipulated by the owner."[12] Georgia has conformed to the majority position, holding that when the agent employed to sell real estate procures a purchaser who is accepted by the owner, and a contract is entered into between them, the commission of the agent is earned, provided the agent acted in good faith toward his principal, even though the purchaser later defaults for no reason caused by the agent.[13]

The view expressed in the principal case is the minority viewpoint in this country. However, considering the comparative newness of such minority holdings, it appears possible that this rule will win acceptance as the more reasonable position in other jurisdictions in the future.

EMILY J. WORTMAN

TAXATION—DEDUCTIBILITY OF TRAVEL EXPENSE —THE VALIDITY OF THE OVERNIGHT RULE

Respondent - taxpayer, a grocery salesman, left home early each day, as necessitated by the size of his territory, and as a result, he ate breakfast and lunch on the road. His employer reimbursed him for all meal expenses, and he generally returned home for the evening meal. Respondent deducted from his income tax the cost of the meals eaten while on the road as business expenses, but the Commissioner disallowed these deductions on the ground that the expenses were not incurred in the pursuit of business "while away from home."[1] Respondent brought suit in the federal district court for a refund and received a favorable verdict. This decision was affirmed by the United States Court of Appeals for the Sixth Circuit, saying that the Commissioner's overnight rule could not under the present

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In the case of Taylor Real Estate & Ins. Co. v. Greene, 274 Ala. 694, 151 So.2d 397 (1963), the court held that where the contract between the seller and buyers merely called for payment by the seller of the fee and did not clearly provide for payment of the brokerage fee irrespective of the consummation of the executory agreement, the broker would be entitled to his commission only if the sale had been consummated or through the fault of the seller was not consummated.

Maryland, in 1852, adopted a position contrary to the majority rule. Keener v. Harrod, 2 Md. 63 (1852); Riggs v. Turnbull, 105 Md. 135, 66 A. 13 (1907). However, it adopted the majority rule by statute in 1910. MD. CODE ANN. art. II §17 (1957); Coppage v. Howard, 127 Md. 512, 96 A. 642 (1916).

11. Dennis Reed, Ltd. v. Goody, [1950] 2 K.B. 277, [1950] 1 All E.R. 919.
12. GA. CODE ANN. §4-213 (1962 Rev.).
13. Davis v. Holbrook, 75 Ga. App. 417, 43 S.E.2d 791 (1947); Cox v. Dolvin Realty Co., 56 Ga. App. 649, 193 S.E. 467 (1937); Baker v. Strawder, 50 Ga. App. 388, 178 S.E. 206 (1935).

1. INT. REV. CODE of 1954 §162(a)(2).