

FALCONBRIDGE, C.J.

OCTOBER 8TH, 1902.

TRIAL.

HENRY v. WARD.

Principal and Agent — Purchase of Goods by Agent — Commission — Damages.

Action by Joseph M. Henry and J. J. Kenyon, tobaccoists residing at Leamington, against Henry C. Ward, a tobacco dealer and cigar manufacturer, who did business at Leamington, to recover \$15,150 for purchasing for the defendant from tobacco growers in the Province of Ontario 2,000,270 pounds of tobacco at a commission of one cent per pound.

J. W. Hanna, Windsor, for plaintiffs.

E. S. Wigle, Windsor, for defendant.

FALCONBRIDGE, C.J.:—The defendant refused or became unable to carry out the terms of his contract with plaintiffs before they had done anything by way of proceedings leading to *ca. re.* or otherwise to impair defendant's chances of being able to fulfil his undertaking with plaintiffs, and through them with the tobacco-growers of the district. If plaintiffs neglected to any extent to superintend the planting, growing, or preparing of the tobacco, no damage resulted therefrom to defendant, but the only result, as matters have turned out, would seem to be that there has been so much the smaller quantity of tobacco of the required quality produced, and plaintiffs' commission will be thereby proportionately reduced. It matters not whether plaintiffs' claim be regarded as commission or damages. Sitting as a jury, I arrive at the amount grown under these contracts as 782,500 pounds, which means \$3,912.50 for each plaintiff or \$7,825 in all.

Judgment accordingly with costs.

WINCHESTER, MASTER.

OCTOBER 9TH, 1902.

CHAMBERS.

ENNIS v. READE.

Pleading—Counterclaim—Striking out—Parties—Action by Execution Creditor of Husband to Declare Wife Trustee of Land for Husband—Counterclaim by Husband for Debt Assigned to Him.

Motion by plaintiff to strike out the counterclaim.