

FIRST DIVISIONAL COURT.

APRIL 3RD, 1917.

## WILLIAMS &amp; CO. v. SPARKS.

*Contract—Shipments of Hay—Agents or Brokers—Sale on Commission—Correctness of Returns—Findings of Fact of Trial Judge—Evidence—Appeal.*

Appeal by the defendants from the judgment of LENNOX, J., 10 O.W.N. 391.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

J. E. Jones, for the appellants.

Alfred Bicknell and B. H. D. Symmes, for the plaintiffs, respondents.

The judgment of the Court was delivered by FERGUSON, J.A. The appellants, he said, were dealers in hay at the village of Vars, in Ontario, and the respondents were hay merchants and brokers in Liverpool, England; they claimed the balance of an account for commission on the price of hay sold by them for the appellants in England, and moneys paid by them in connection with the sales of hay for the appellants' benefit and under instructions from them, according to detailed statements rendered and put in at the trial.

The trial Judge found against the contention of the appellants that the respondents were not their agents, but purchasers of the hay; and the appellate Court was of the opinion, upon the evidence, that no other finding could be made than that the respondents undertook to handle the hay as agents or brokers for the appellants.

Upon the argument of the appeal, the appellants sought to make out that the respondents had misrepresented the prices which the hay would net the appellants; but it was satisfactorily established that the quotations "c.i.f. net to you" were intended merely as estimates based on the ruling prices and demand prevailing, and further based on the assumption that these prices and the demand would continue up to the time of the arrival of the hay and that the hay would be in good condition and of the grade which the appellants represented it to be—and the appellants so understood the quotations.

Much of the trouble was caused by the appellants not shipping hay which was up to grade and in good condition; that caused expense and delay in the selling; and a portion of the loss was