

considerable loss, but that was after they had been exhaustively and critically examined, and their condition known. . . .

I think the respondent should be entitled to shew, if he can, that he could have re-sold these eggs on the 18th, 19th, or 20th February to better advantage than upon the 21st February, and in excess of the prices afterwards realised. But he ought to bear the costs of a reference on that point, if he chooses to take one, in view of the fact that he went into evidence of damage at the trial and should have done so upon the proper basis.

The appeal should be allowed with costs, and judgment should be entered for the respondent for nominal damages, say \$1, and for payment to the respondent of the amount in Court, with a reference at the respondent's expense if he seeks further damages upon the principle I have indicated. If a reference is had, the judgment will reserve further directions and costs of action. The reference may be to the Master at Owen Sound or to the Master in Ordinary, as the respondent may elect. If the reference is not had, the judgment will be with costs on the Division Court scale without set-off.

SEPTEMBER 21st, 1914.

SHAVER v. ROSS.

Vendor and Purchaser—Agreement for Sale of Land—Formation of Contract—Option — Acceptance—Failure to Make Payment—Evidence—Findings of Trial Judge—Appeal.

Appeal by the plaintiff from the judgment of MIDDLETON, J., at the trial, dismissing the action, which was brought to enforce specific performance of an agreement by the defendant Ross to sell to the plaintiff a parcel of land in the outskirts of the city of Windsor, containing about eight acres.

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

F. C. Kerby, for the appellant.

J. H. Rodd, for the defendants, the respondents.

The judgment of the Court was delivered by MAGEE, J.A.:—The agreement bears date the 13th January, 1913, and by it Ross, in consideration of \$10 paid, did "give an option to and