

repudiate), it is, I think, beyond doubt that had a settlement of the amount admitted by them to be due in their statement (exhibit 30) accompanying their letter of October 7th, 1911, been made, nothing further would have been heard of the additional claim put forward in the action.

In his reasons the learned Referee refers to the actions of defendants evidencing an acceptance on their part of plaintiffs' resignation without requiring the three months' notice. This view, with which I agree, is further supported by the correspondence between the parties in October, 1911, when plaintiffs on October 13th, wrote defendants with reference to a proposed sale and asked to be allowed a commission thereon, to which defendants replied on October 17th, agreeing to allow a commission if the sale went through, and saying, "we will be glad to fill any orders you send us on a commission basis," following which they stated the basis of commission they would allow on sales of flour, feed and grain respectively, and which differed materially from the terms agreed upon in their former agency agreement. If defendants had not agreed to a rescission of the original agreement, there would have been no object in making new terms of remuneration for orders sent by plaintiffs to defendants, and to my mind this correspondence of itself shews that the original agreement had been put an end to by consent.

The Referee, in arriving at the amount to which he found plaintiffs entitled, refused to allow defendants an item of \$10 claimed by them for moneys advanced in September, 1910, to Robert Gibson, on the ground that it was a matter personal to him. Robert does not admit he received the \$10, but his memory is not clear about it. On the other hand, defendants' book-keeper is quite positive he gave the \$10 to Robert when he was at defendants' place of business in connection with business of plaintiffs, and that the amount has not been repaid. I think this should be allowed defendants and that the \$2,700 found due by the report should be reduced by that sum.

My opinion, therefore, is, that defendants' appeal should be dismissed with costs, and the report, varied by the deduction of this \$10 from the \$2,700, should be confirmed, and that judgment should be entered in favour of plaintiffs for \$2,690, dismissing plaintiffs' claim for damages, and dismissing defendants' counterclaim, and that defendants pay the costs of the action and of the reference.