

Full Court.]

DAVIDSON v. REID.

[Jan. 23.]

Trial—Findings of jury—Construction by court—Sales—Warranty—Counterclaim.

The jury found that plaintiff warranted a cream separator which had been sold to defendant, for a year, and that there was a breach resulting in damages to defendant to the amount of \$5.

They also found that defendant agreed to waive the warrants.

Held, that the court could look at the pleadings and evidence for the purpose of construing these findings and it appearing that the alleged waiver occurred after the breach and was without consideration and that it was conditional upon plaintiff putting the machine in good order, of the fulfilment of which there was no evidence, defendant was entitled to recover on his counterclaim for damages, and that his appeal must be allowed with costs.

Roscoe, J.C., for appellant. J. J. Ritchie, K.C., for respondent.

Full Court.]

BURCHELL v. GOWRIE.

[Jan. 23.]

Vendor and purchaser—Commissions to agent—Failure of agent to complete sale.

Where the agent entrusted with the sale of a mining property upon certain terms involving the payment of a considerable portion of the purchase money in cash, for which he was to receive a commission of ten per cent., failed to carry out the object aimed at and his principals were subsequently approached by the parties with whom their agent had been negotiating and were induced to agree to a sale of the property for a different consideration from that originally contemplated, consisting wholly of bonds and preferred and common stock in the company by which the property was acquired, the latter proposition being one which was open to the vendors before the matter was placed in the hands of the agent.

Held, that the transaction was not to be regarded as substantially the same disposition of the property that the agent was employed to effect and the principle of law in regard to the payment of commissions when a sale is made of the same property to the same parties by the principals direct, did not apply.

W. B. Ritchie, K.C., and Robertson, for appeal. Mellish, K.C., O'Connor and Burchell, contra.