

—and there would be no set-off of costs. If the consent should not be filed there would be judgment for the plaintiff for \$200, with costs as stated. G. M. Jarvis, for the plaintiff. E. A. Harris, for the defendant.

FIELDEN v. JACQUES—LENNOX, J.—OCT. 10.

Principal and Agent—Action by Agent for Commission on Sale of Shares—Evidence—Onus—Special Agreement—Release.—The plaintiff claimed \$1,250 as commission at 5 per cent. on the sale of \$25,000 worth of stock in the Consumers Heating Company Limited, which, as he alleged, he sold for and on behalf of the defendant, or Jacques Davy & Co., to one Pickford, from whom it had been originally purchased. The action was tried without a jury at a Toronto sittings. LENNOX, J., in a written judgment, referred to the plaintiff saying that he knew that the stock was held by the firm mentioned, composed of the defendant and one Davy, but he said that he was instructed by the defendant and acted for him; that, when the defendant spoke to him about selling and getting out, the defendant said Pickford was the only likely purchaser; and that it was agreed that, if the plaintiff effected a sale, he was to receive a claim against the company for coal amounting to \$1,700. Probably the \$1,700 was a claim of the partnership against the company, and it was the partnership stock, as the plaintiff knew that that was to be and was afterwards sold. The plaintiff did not sue for specific performance of the alleged special agreement, but for a commission on a percentage basis, as above stated. If this were the only obstacle in the plaintiff's way, it could be got over. The defendant denied that he made the alleged agreement, or made any agreement to engage the plaintiff in any way, and also denied that the sale made to Pickford was brought about or facilitated by any act of the plaintiff. In this latter contention the defendant's evidence was confirmed by Pickford. It was common ground that Pickford knew that the defendant was dissatisfied and wanted to sell back the partnership holdings; that Pickford and the defendant were exceedingly intimate and friendly; and that Pickford and the defendant were in the habit of meeting and having discussions about the company very frequently if not daily. The onus of proving employment, and that the plaintiff's intervention was at least an element in bringing about a sale, was on the plaintiff. The plaintiff had failed to shew either that the defendant engaged his services or that the sale to Pickford was brought about or in any way effected by any act of the plaintiff. The defendant put in evidence a release, executed by the plaintiff,