

FERGUSON, J.

MAY 11TH, 1903.

TRIAL.

DOWLING v. DOWLING.

Contract—Payment for Services—Proof of Contract—Question for Jury—Motion for Nonsuit.

Motion for a nonsuit in an action tried with a jury at Cornwall. Action for specific performance, or to recover payment for services rendered to defendant on his farm by one of the plaintiffs under an alleged agreement between his father, the other plaintiff, and the defendant.

E. G. Porter, Belleville, for plaintiffs.

J. H. Madden, Napanee, for defendant, contended that no contract had been proved, citing *Iler v. Iler*, 9 O. R. 550, and *Smith v. Smith*, 29 O. R. 309.

FERGUSON, J., held that there was some evidence to go to the jury, and that a nonsuit would be erroneous. If the jury believed the evidence that defendant said, "I will pay him well," it was for them to say what, in all the circumstances and surroundings as shewn by the evidence, was the real meaning, and how it was understood by the parties concerned. Motion for nonsuit refused. The jury having found that there was a bargain whereby defendant promised to pay Robert Dowling the younger in money for his services, and that the services were worth \$125 a year, which amounted to \$979.15, judgment to be entered for plaintiffs for that sum with costs.

MAY 11TH, 1903.

DIVISIONAL COURT.

HENRY v. WARD.

Principal and Agent—Purchase of Goods by Agent—Commission—Ascertainment of Amount.

Appeal by defendant from judgment of FALCONBRIDGE, C.J. (1 O. W. R. 652) in favour of plaintiffs for \$7,825 in an action to recover a commission for purchasing for defendant from tobacco growers in Ontario, 2,000,270 pounds of tobacco.

E. S. Wigle, Windsor, for defendant.

J. W. Hanna, Windsor, for plaintiffs.

THE COURT (BOYD, C., and FERGUSON, J.) held that there should be some deduction for the crop not up to the