

FIRST DIVISIONAL COURT.

FEBRUARY 7TH, 1917.

ZOLLER v. TANNER &amp; GATES.

*Contract—Agreement to Procure Loan of Money at Current Rate—  
Breach—Evidence — Onus — Commission — Duty of Agent—  
Appeal—Reduction of Amount of Judgment—Costs.*

Appeal by the defendants from the judgment of the County Court of the County of York (DENTON, Jun.Co.C.J.) in favour of the plaintiff in an action for breach of contract.

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

J. M. Ferguson, for the appellants.

R. G. Smythe, for the plaintiff, respondent.

MEREDITH, C.J.O., read a judgment in which he said that the action was brought to recover damages for the alleged breach by the appellants of an agreement in writing entered into by them with the respondent's husband on the 21st May, 1914, by which they agreed to get for him or the plaintiff loans on her houses at the current rates of interest—the loans to be as near 50 per cent. of the selling value of the houses as they could arrange, and the houses to be built of solid brick. There was no obligation upon the appellants to procure the loans until the houses were completed; and the onus was upon the respondent to prove that the rate which she agreed to pay on the loan which was ultimately effected was in excess of the current rate at that time, or at the time the buildings were completed; and that onus she failed to satisfy.

The trial Judge's view was that the loan should have been procured at 8 per cent.; and, because the respondent secured it at 7 per cent. by paying a bonus of 2 per cent., one-half of which was repaid to him by the vendor of the land, the Judge gave the respondent judgment for \$71.50, which he found to represent the excess over 8 per cent. which the respondent by paying the one per cent. in cash had paid. The allowance of \$71.50 ought not to have been made.

The learned Judge also allowed the respondent \$32, half of \$64 which the mortgagees deducted from the amount of the loan. This deduction was intended to pay a commission of 2 per cent. to the person who introduced the loan to the mortgagees. The appellants had nothing to do with its being deducted—that was arranged between the respondent and the mort-