

HON. MR. JUSTICE KELLY.

JUNE 28TH, 1913.

GIBSON v. CARTER.

4 O. W. N. 1565.

Judgment—Motion for, on Report of Referee—Appeal from Findings of Referee—Reduction in Amount Awarded—Dismissal of Appeal.

KELLY, J., varied a finding in favour of plaintiffs by J.A.C. Cameron Esq., Official Referee, by reducing the amount awarded them from \$2,700 to \$2,690, but otherwise dismissed defendants' appeal from such report.

Application by plaintiffs for judgment on further direction and costs, and by defendants by way of appeal against the report of J. A. C. Cameron, Esq., Official Referee, in so far as it finds in favour of plaintiffs.

On the reference made to J. A. C. Cameron, Esq., Official Referee, he on February 20th, 1913, found (1) that plaintiffs are entitled to recover from defendants \$2,700 in respect of commission. (2) That plaintiffs are not entitled to any damages in respect of the matters alleged in their statement of claim. (3) That defendants are not entitled to damages against plaintiffs in respect of the matters set forth in their counterclaim.

R. S. Robertson, for the defendants.

Glyn Osler, for the plaintiffs.

HON. MR. JUSTICE KELLY:—The conclusions I have arrived at have been reached after a careful perusal and consideration of the voluminous evidence (some hundreds of papers) and the exhibits (almost two hundred in number) which were submitted to the Referee. I think it unnecessary to go into a detailed review of all this evidence, but weighing it all carefully, I cannot disagree with the opinion formed by the learned Referee, except in respect of the one claim of small amount.

The written reasons given by the Referee explain somewhat fully what occurred between the parties. The circumstances which influenced me are that, when plaintiffs entered into the agency agreement with defendants an important element was the enlarging by defendants of the capacity of their mill, a project which plaintiffs were given to understand would be carried through at an early date; the agency agreement confined plaintiffs' operations to selling for defendants except when by consent they were to be allowed