

GIBSON v. CARTER—KELLY, J.—JUNE 28.

Contract—Principal and Agent—Agent's Commission—Breach of Contract—Damages—Report of Referee—Appeal—Judgment—Costs.]—On a reference to Mr. J. A. C. Cameron, an Official Referee, he found: (1) that the plaintiffs were entitled to recover from the defendants \$2,700 in respect of commission; (2) that the plaintiffs were not entitled to any damages in respect of the matters alleged in their statement of claim; (3) that the defendants were not entitled to damages against the plaintiffs in respect of the matters set forth in the counterclaim. The action and counterclaim were in respect of transactions between the plaintiffs and defendants under an agency agreement. The defendants appealed against the report in so far as the findings were in favour of the plaintiffs; and the plaintiffs moved for judgment upon the report and for costs. KELLY, J., said that, after a careful perusal and consideration of the voluminous evidence (some hundreds of pages) and the exhibits (almost two hundred in number) which were submitted to the Referee, and weighing the evidence carefully, without going into a detailed review of all of it, he could not disagree with the opinion formed by the Referee, except in respect of one claim of small amount, viz., \$10 for moneys said to have been advanced by the defendants in September, 1910, to the plaintiff Robert Gibson. This item should be allowed to the defendants, and the \$2,700 found due to the plaintiffs should be reduced by that amount. Order made dismissing the defendants' appeal with costs. Judgment for the plaintiffs upon the report (as varied by the deduction of the \$10) for \$2,690, dismissing the plaintiffs' claim for damages, dismissing the defendants' counterclaim, and requiring the defendants to pay the plaintiffs' costs of the action and reference. R. S. Robertson, for the defendants. Glyn Osler, for the plaintiffs.

GELLER v. BENNER—FALCONBRIDGE, C.J.K.B.—JUNE 28.

Costs—Mortgage—Redemption—Payment into Court—Mortgages in Possession.]—Motion by the plaintiff for judgment on