

The judgment at the trial declared that the defendant was liable under a covenant for the damages which the plaintiffs had sustained by reason of the acts of the defendant's husband, Daniel R. Dewey, and referred it to the Master to ascertain and state what damages the plaintiffs had sustained by reason of the breaches of the defendant's covenant, reserving further directions and costs.

The Master reported that he found that the plaintiffs had sustained damages to the extent of \$5,000, and his report was upheld by ANGLIN, J., upon appeal by the defendant, who then appealed to a Divisional Court. That Court reduced the damages to \$32; and the plaintiffs now appealed.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

G. Lynch-Staunton, K.C., for the plaintiffs.

A. M. Lewis, for the defendant.

MOSS, C.J.O.:— . . . In dealing with the question of damages, which was the only one referred to him, it was the Master's duty to have regard to the pleadings and proceedings at the trial, but he could not disregard the express declarations and directions of the judgment.

The pleadings shew that the plaintiffs complained that a covenant entered into by the defendant to the effect that her husband . . . would not be interested in or carry on any business of dealing in ice, fuel, or any other commodity to be dealt in by the plaintiffs, and that he would not be employed by or work for any person, firm, or company, nor hold stock in any company, engaged in dealing in ice, fuel, or any other commodity to be dealt in by the plaintiffs, for 10 years, within a radius of 30 miles from the city of Hamilton, had been broken, thereby causing great injury to the plaintiffs' business and consequent damage to them.

Beyond a general denial of the allegations of the statement of claim, no defence was put forward, except (by amendment) that the defendant in entering into the covenant acted without independent advice, in ignorance of and without understanding her position or rights.

At the trial this issue was determined against her, and the judgment already mentioned was pronounced.

Having before him the declaration of the defendant's liability to the plaintiffs for damages sustained by reason of her husband's acts, and the direction to ascertain these damages, the Master would not be warranted in assuming that such a reference was