

Nugent was a man of not much means, and Brown represented a number of foreign commission merchants who dealt in fruit.

Nugent told Brown that he (Nugent) could buy some apples at Wellington, and Brown said "all right," and advanced him \$100; but before Nugent left Brown, he told him not to pay more than \$1 a barrel for the apples.

Nugent accordingly went to Wellington, to the plaintiff's house, told him he wanted to buy by the barrel, and found that he could not buy for less than \$1.25 per barrel. Nugent told the plaintiff that he could not pay that price until he had consulted Brown (this being the first time that Brown's name had been mentioned between them); asked the plaintiff to wait until he could communicate with Brown. Nugent telephoned Brown and told him what arrangements he could make with the plaintiff, and Brown told him to buy. Nugent accordingly entered into a written contract with the plaintiff for sale by the plaintiff to Nugent of certain apples named. Nugent also got some barrels from the plaintiff, but did not pay for them. He paid for all the apples he took away, but the plaintiff complained that he did not take all he bought.

Judgment was given by the Judge of the County Court against both defendants (the pleadings having been noted closed as against Nugent) for \$430 and costs.

The defendant Brown appealed, upon the grounds: (1) that judgment having been given against the alleged agent, a judgment cannot be sustained against the alleged principal; and (2) that the relation of principal and agent did not exist between Brown and Nugent.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

I. F. Hellmuth, K.C., and G. Drewry, for the defendant Brown.
E. M. Young, for the plaintiff.

RIDDELL, J. (after setting out the facts as above):—I do not enter into a discussion of the first ground of appeal, which may not be without difficulty for the plaintiff, in view of such cases as *Morell v. Westmoreland*, [1903] 1 K. B. 64, [1904] A. C. 11; *The Belcairn*, 10 P. D. 161; *Cross v. Matthews*, 20 Times L. R. 603; *Willcocks v. Howell*, 8 O. R. 576. *Sanderson v. Burdett*, 16 Gr. 119, 18 Gr. 417, is really a case of partnership and purchase by one partner for the firm. *Sheppard Publishing Co. v. Press Publishing Co.*, 10 O. L. R. 243, which is, of course, binding upon us, is put upon the ground that the cause of action was a joint tort, though the joint tort-feasors were principal and agent: see p. 252.