

1903

*Nov. 2.

*Nov. 10.

GOOLD BICYCLE COMPANY v. LAISHLEY.

*Special leave to appeal—Matter in controversy—Assessment of damages
—Costs.*

MOTION for special leave to appeal from the judgment of the Court of Appeal for Ontario (1), reversing the judgment of Mr. Justice Ferguson (2), and ordering judgment to be entered in favour of the plaintiff for damages, assessed at \$1,000, with costs.

The action was brought to recover damages for wrongful dismissal. The plaintiff had been employed as the company's selling agent and was entitled to receive a fixed salary and also a commission on his sales. Before the expiration of the term he was dismissed without cause, after sales to a large amount had been, up to that time, effected by him. On the hearing of the appeal in the court below, the main question was whether or not, in estimating the damages to which the plaintiff was entitled, an allowance should be made for his commissions upon prospective sales. The judgment appealed from (1) held that, in estimating the damages, the commission on sales which there was reasonable ground to think might have been effected during the unexpired portion of the term should be taken into consideration.

The company sought special leave to appeal, as the judgment was for \$1,000 only, exclusive of the costs, on the ground of hardship, as the costs had accumulated ~~until they exceeded~~ \$2,000, and also that the damages had been assessed by mere guess

* **PRESENT** :—Sir Elzéar Taschereau C.J. and Sedgewick, Girouard, Davies and Killam JJ.

(1) 6 Ont. L. R. 319.

(2) 4 Ont. L. R. 310.

and were not justified by any reasonable calculation warranted by the circumstances of the case.

After hearing counsel for the parties the Supreme Court of Canada reserved judgment and, on a subsequent day, dismissed the applications with costs.

Motion dismissed with costs.

H. S. Osler K.C. for the motion.

Watson K.C. contra.

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GOOLD

v. C

LAISHLEY.