

Privy Council Appeal No. 46 of 1914.

Douglas Brothers - - - - *Appellants,*

v.

The Acadia Fire Insurance Company - - *Respondents.*

FROM

THE COURT OF APPEAL FOR NOVA SCOTIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 14TH JULY 1914.

Present at the Hearing :

THE LORD CHANCELLOR.	SIR CHARLES FITZPATRICK.
LORD MOULTON.	SIR ARTHUR CHANNELL.
LORD SUMNER.	

[Delivered by THE LORD CHANCELLOR.]

This is an appeal from a judgment of the Supreme Court of Nova Scotia, which by a majority of three to two, reversed the judgment of Russell, J., the Trial Judge. The question relates to the construction of a written agreement. The appellants are insurance brokers, and the respondents are an Insurance Company. In 1908 the respondents appointed the appellants their sole agents for the United States and territories, excluding San Francisco, with authority to accept, within certain limits, proposals for insurance against fire and lightning. The terms of the appointment were embodied in the written agreement, dated 18th July 1908, which their Lordships have to construe. Under this agreement the appellants were to open and maintain an office in the city of New York, and report daily all policies issued

and renewals. They were also to send in monthly reports of business done, and to remit the balances of their monthly accounts within 90 days. They had authority to pay losses of 500 dollars or less on receipt of proof, and to issue drafts on the respondents for losses above that amount, provided the respondents had passed the proofs. The clause as to remuneration was in these terms:—"Said
" Douglas Brothers shall receive as compensation
" 25 per cent. of the gross premiums received by
" them, less return premiums and rebates, and
" an additional 15 per cent. on the annual net
" profits arrived at by deducting from the gross
" premiums all return premiums, rebates, losses,
" and loss expenses paid, and all commission
" (including profit commission), and any other
" allowances made said Douglas Brothers. Such
" compensations shall be in full for services
" rendered, it being the mutual understanding
" that the cost of all printing and stationery
" (except policies and agency expenses), shall be
" borne by said Douglas Brothers. Loss
" expenses (or adjustment expenses), to be
" treated as losses." The agreement was to continue in force until determined by six months' notice, which might be given by either of the parties.

The contention for the appellants was that on the proper interpretation of the remuneration clause, the 15 per cent. additional on the annual net profits, was to be ascertained at the end of each year by deducting from the gross premiums received during that year all losses actually paid during the year, and the other items mentioned. The contention for the respondents was that the commission applied only to profits, and that in order to ascertain these profits deductions must be made not only of losses and expenses actually paid within the year, but of those payable in

respect of the business done during the year, and eventually paid afterwards, apart from which the true profits of the year could not be ascertained.

It may or may not be true that the contract contended for by the respondents would have been a more sensible one to enter into than that contained in the clause as interpreted by the appellants. It is possible that an over sanguine view of the prospects of the business may have led the respondents to enter into an unduly rash agreement. But their Lordship's duty is simply to construe the words as they stand. So read their meaning does not appear ambiguous. The intention expressed is "to provide," in the words of Ritchie, J., "a mode by which the net profits for the year were to be adjusted, so as to make a basis for arriving at the amount of the plaintiffs' commission in each year." Their Lordships are unable to come to any other conclusion than that this interpretation is the true one. The expression "losses and loss expenses paid" is not ambiguous used as it is here in relation to annual net profits, arrived at by deducting from the gross premiums these losses and expenses. The language employed does not, in their Lordships' opinion, admit of the construction put on it by the majority of the Supreme Court. They will, therefore, humbly advise His Majesty that the judgment appealed against should be reversed, and that of the Trial Judge restored. The respondents must pay the costs here and in the Supreme Court.

THE LORD CHANCELLOR
IN CHIEF JUSTICE
OF GREAT BRITAIN

DOUGLAS BROTHERS

v.

THE ACADIA FIRE INSURANCE
COMPANY.

DELIVERED BY
THE LORD CHANCELLOR.

LONDON:
PRINTED BY EYRE AND SPOTTISWOOD, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1914.