Privy Council Appeal No. 46 *of* 1919.

The Emerson-Brantingham Implement Company - - - *Appellants*

v.

Charles J. Schofield - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 9TH DECEMBER, 1919.

Present at the Hearing:

VISCOUNT FINLAY.
VISCOUNT CAVE.
LORD SHAW.
LORD PARMOOR.

[*Delivered by* VISCOUNT FINLAY.]

In this case the petition for special leave to appeal contained this averment in paragraph 6: "The question is of importance as it affects the construction of contracts in general, especially those relating to the supply of machinery, affecting the suppliers thereof, and the large class of farmers who are purchasers of agricultural machinery." Legislation was passed in Saskatchewan (Statutes of Saskatchewan 1915, ch. 28) before that petition was presented with regard to the sale of farm implements, which prescribed a statutory form of contract, and required that any such contract should be in that statutory form. Section 21 contained the enactment to which attention has been drawn, providing that: "No contract, order, or security made or taken in connection with the sale of agricultural implements shall contain any statement to the effect that the vendor is not responsible for the representations of his agents, or any other language in anywise limiting or modifying the legal liability of the vendor as provided in this Act, or in the forms in the Schedule hereto; and the insertion of any such statement, or the use of any such language, shall be of no effect." Then Subsection 2 is:

"Any breach of the provisions of this section shall render the contract order or security void at the option of the purchaser." The existence of such legislation in the Province of Saskatchewan was a most material circumstance on the question of whether special leave should be granted. It is obvious that the statement contained in paragraph 6 was likely to have some effect on their Lordships in determining whether they should advise His Majesty that leave should be granted. The learned Counsel applying for leave was in entire ignorance of the existence of this legislation, but the manufacturers, the petitioners, cannot possibly have been in the same ignorance. It was their business to know of such legislation, and they ought to have seen that those in England who were instructed to attend to the matter for them should have their attention directed to all the relevant facts, so that the case might not be presented to their Lordships in an incorrect or insufficient form. The statement which ought to have appeared as to the existence of this legislation might have made all the difference with regard to the granting or refusing of special leave. The Board think it probable that if the facts had been known at the time when the application for special leave to appeal was made to their Lordships such leave would not have been granted; but there is no doubt whatever that the matter was of great importance, and one likely to influence the opinion of those who had to decide as to the advice that should be given to His Majesty as to granting or withholding special leave to appeal.

In these circumstances their Lordships will humbly advise His Majesty that the order granting the special leave to appeal should be rescinded and the appeal dismissed with costs.

In the Privy Council.

THE EMERSON-BRANTINGHAM IMPLEMENT COMPANY

v.

CHARLES J. SCHOFIELD.

DELIVERED BY VISCOUNT FINLAY.

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