

*Privy Council Appeal No. 67 of 1923.*

George Jasperson - - - - - *Appellant*

*v.*

The Dominion Tobacco Company - - - - - *Respondents*

FROM

THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 6TH JULY, 1923.

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*Present at the Hearing :*

VISCOUNT HALDANE.

LORD SUMNER.

LORD PARMOOR.

LORD PHILLIMORE.

[*Delivered by* VISCOUNT HALDANE.]

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This is an appeal from the Supreme Court of Ontario which has affirmed a judgment of the trial Judge, Middleton J. The effect of the judgment is to enable the respondent Company to recover over from the appellant as third party a sum of \$5,177.08, which the respondent Company has been ordered to pay to the plaintiff in an action brought by one Peterson against the respondent Company and others, to recover damages for failure to accept delivery of tobacco contracted to be sold to it. There were other actions concerned with claims under analogous contracts which were tried along with the present case, but as to these no question arises on this appeal, nor are their Lordships concerned with any question in the present case other than the claim to recover over made by the respondent Company against the appellant.

The circumstances under which the claim to recover over arose were briefly these:—The respondent Company was a firm having its head office at Montreal, and the MacDonald Company was an incorporated Company having its head office in the same city.

The Foster Tobacco Company was also an incorporated Company, and had its head office at Leamington in Canada. The appellant Jasperson was a dealer in tobacco, carrying on a large business at Kingsville in the Dominion. Deacon was a comparatively young man, formerly in the employment of Jasperson and more recently in that of the Foster Company. At the time of the events which gave rise to the claim he was also a purchasing agent for the respondent Company.

In 1919, in the tobacco-growing region in Canada with which this case is concerned, it was at first thought that the seasonal crop would be short of the supply required, but later on the conditions of growth became very favourable, and as the result prices fell.

Deacon had been employed by the respondent Company, in June 1919 as its agent to buy tobacco, and he had undertaken not to act as buyer for any other concern except the Foster Company. He was supplied by the respondent Company with printed forms on which he was to contract with the tobacco growers. The name "Dominion Tobacco Company," was printed in the body of these forms of contract, and, at the end, as the signature of the purchaser. Jasperson was the agent, with very wide authority, to purchase on a large scale tobacco for the MacDonald Company, and to make such arrangements as he could for that purpose. In 1919 he desired to buy very large quantities of tobacco for his Company. Doubtless because their open competition in the market would have the effect of raising prices, he wished to buy through others than himself. He knew the position of Deacon and the arrangement the latter had with the Dominion and Foster Companies, and he also knew that he had been given the forms of contract referred to. Deacon was directed by the Dominion Company to buy for them not more than 350,000 lbs., an amount which was reduced later to 300,000. But although this limitation was made it did not appear in the advertisements of his authority as agent, nor in the terms of any form of contract or other documents which a seller dealing with him would see. As against a seller having no notice of it who sold to the Dominion Company through Deacon, a larger quantity, the limitation would therefore be inoperative. Jasperson, as has already been observed, knew the position of Deacon in relation to the two Companies for which he was acting.

The learned trial Judge has made certain findings of fact in which the Court of Appeal have concurred, and which their Lordships have no reason to question. The material findings are that Deacon was instructed by Jasperson to purchase for him a large quantity of tobacco in the names of the Dominion and Foster Companies; that he reported to him purchases so made from day to day during the buying season, and that these were all approved by Jasperson. In the names of the Dominion and Foster Companies, Deacon in this way purchased tobacco amounting to 1,100,000 lbs. Out of this amount he handed 300,000 lbs. to the Dominion Company. The remainder, amounting

to 800,000 lbs., he proffered to Jasperson, but the latter repudiated the arrangement. There had been a heavy fall in prices.

As the result of the repudiation the sellers, being unable to get their money, sued the Dominion Company. The present action was brought by a seller named Peterson. He recovered from the respondent Company the sum already stated as damages, measured by the difference between his contract price and that at which it was possible to realise by selling. But in the course of the proceedings the Company served on Jasperson a third party notice, under the Procedure Rules which obtain in Ontario. These are wider in scope in this connection than the corresponding Procedure Rules in England, for they enable the claimant under a third party notice to claim not only contribution or indemnity but any other relief over. Under this procedure, to which no exception was taken in the Courts below, these Courts have ordered that the respondent Company recover against the appellant Jasperson the money which the Company had been made liable to pay to the plaintiff Peterson.

Their Lordships think that this order, the only order made as to which any question arises in the appeal, was right. Jasperson must be taken to have known that Deacon was not at liberty to purchase for him or for the MacDonald Company whom he represented, and that he had no authority to purchase quantities largely in excess of his instructions from the respondent Company. By inducing Deacon to violate his duty to the respondent Company he has occasioned to them a loss which their Lordships consider that he was rightly ordered to make good. The reason on which this conclusion rests is one which is now well established. Interference directed to bringing about a violation of legal right, such as that of the respondent Company to have their contract with Deacon duly observed, is a cause of action, and it is a violation of legal right to interfere with contractual relations recognised by law if there be no sufficient justification for the interference. It is an illustration of this principle when the interference is directed to inducing an agent to act in contravention of his duty by pledging his principal's credit. What was laid down long ago in *Lumley v. Gye* (2 E. & B. 216) reaches all wrongful acts done intentionally to damage a particular individual, and actually damaging him. The law as thus stated was explained by the House of Lords in *Quinn v. Leatham* [1901] A.C. 495, and in their Lordships' opinion it applies in the case before them. The right of the respondent Company arises out of a tort, for the consequences of which the appellant was bound to compensate them. A legal foundation for the right of the respondent Company to claim over against the appellant might be put in other ways, but their Lordships think that in whatever form it is put the result will be the same, for the damages will be at least as great as the amount for which the claim over was made.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

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GEORGE JASPERSON

21.

THE DOMINION TOBACCO COMPANY.

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DELIVERED BY VISCOUNT HALDANE.

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