Privy Council Appeal No. 141 of 1919.

The Standard Oil Company of New York - - - - - *Appellants*

v.

T. and M. Winter - - - - - - - - *Respondents*

FROM

THE SUPREME COURT OF NEWFOUNDLAND.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND JULY, 1920.

Present at the Hearing:

VISCOUNT HALDANE.
LORD BUCKMASTER.
VISCOUNT CAVE.
LORD DUNEDIN.
LORD ATKINSON.
MR. JUSTICE DUFF.

[*Delivered by* VISCOUNT HALDANE.]

In this appeal their Lordships are in a position to state at once the advice which they will tender to the Sovereign.

The respondents were plaintiffs in an action for breach of contract, and they were claiming against the appellants, from whom they recovered damages. The question is whether it was properly found that the contract was broken. If that finding was right, then no question arises as to the measure of the damages. The respondents, as general merchants, carrying on business at St. John's, Newfoundland, deal principally in provisions and foodstuffs, and goods of the like kind, including oil. The appellants are a very well-known and important corporation in the United States of America. They had been in the habit of sending, in the course of the transactions to which this appeal relates, a great deal of oil into Newfoundland. The appellants had a manager, a Mr. Urquhart, who appears to have attended to the Newfoundland business. In the year 1917 Mr. Prunty was sent from headquarters, and attached to the business at St. John's for the purpose of assisting in its conduct. On the 31st March, 1917, an agreement was entered into between Franklins Agencies, Ltd., who were the general agents in St. John's

of the appellants, and Messrs. Winter. There is no doubt that this agreement was entered into on behalf of the appellants, and binds them, and, if there had been any question about it, it is met by the fact that it is signed by Mr. Prunty on behalf of the appellants. The terms of the agreement are very short, and are as follows: "This agreement made this 31st day of March, 1917, between Franklins Agencies, Ltd., party of the first part"—that is the appellants—"and T. & M. Winter, party of the second part, covers the following:—The party of the first part agrees to supply—Skipper Kerosine Oil low test (120) at 19 cents per gallon, Perfection Kerosine Oil high test (150) at 20 cents per gallon, both f.o.b. St. John's, freight and duty paid, delivered to the stores of the party of the second part. Also gasolene in steel brls. at 40 cents per gallon, steel brl. to be charged at $10.00 per brl., and credited at the same price when returned. Also cases of Kerosine Oil at $2.40 and $2.50." This is the first part of the contract, and their Lordships observe that it is a general contract to supply oil to the respondents. The second part of the contract contains some definitions and restrictions. "Should prices decline the party of the first part agrees to protect the party of the second part up to the time the goods are invoiced. Should prices advance the above-named prices will continue to be charged. Should the party of the first part not be able to compete the party of the second part has the right to cancel this contract, but first must give the party of the first part the refusal of the business." That seems to be a provision in favour of the respondents. What is meant by the party of the first part not being able to compete it is not necessary to determine with precision. It may be that if they found they could not supply all the oil the party of the second part had a right to cancel the contract. That is the remedy provided, and it is in favour of the parties of the second part, the respondents. Then it goes on: "The party of the second part agrees to purchase all their oil from the party of the first part, provided that the party of the first part abides by the above-named conditions of this agreement. This contract is made subject to the acts of God and submarines, and expires on the 31st December, 1917." Their Lordships observe that although that contract may seem to be an adventurous one in that it is unlimited as to the amount which the appellants contract to supply, this contract was to come to an end a few months later, and therefore the appellants may have been willing to take any risk. But there is also (possibly this question does not arise for a reason which will be stated) another limitation in it: the agreement is to purchase all their oil, on the part of the respondents, and it may be that that would not enable them to enter into just such a business as the appellants themselves conduct, of supplying oil all over the world. It may be that all the oil they can require must be for the oil merchants in Newfoundland.

In that condition of things it is important to see what happened at the trial of the action. The judgment was given by Mr. Justice Kent. His findings of fact were accepted by the Court

of Appeal, who affirmed his judgment. There are three findings of the learned Judge which are of importance. The first is this: "The causes that contributed to this unsatisfactory condition of affairs"—the unsatisfactory condition of affairs being the non-delivery of the oil on the part of the appellants when called upon to make delivery in considerable quantities—"were the non-arrival, or the delayed arrival, of shipments of oil from New York, and the fact that the oil that reached him"—that is Mr. Urquhart, who was in Newfoundland, or had an agent there—"was used by Mr. Urquhart partly to meet his contractual obligations to the plaintiffs and others with whom he had made similar contracts, and partly to meet the demand of other purchasers at the market price, which was advancing all the time." That is in effect a finding that Mr. Urquhart was selling to persons other than the respondents oil which he had, and that he was selling it at higher prices than he could get under his contract from the respondents. The second important finding of fact of the learned Judge is this. He says: "It is quite possible that should the plaintiffs order under this contract such large quantities of oil as would be out of all proportion to the circumstances, and the defendant took proper exception thereto, he would not be bound to deliver it. But there is nothing in the evidence to warrant the conclusion that the 8,000 casks of oil actually ordered by them would not have been used by the plaintiffs in the course of their trade. Within reasonable limits the plaintiffs were the best judges of what their requirements were during the year." The learned Judge therefore thinks that the plaintiffs were justified in looking to the defendants to supply them with the quantity of oil they required, and that by not delivering it the defendants committed a breach of contract for which the plaintiffs were entitled to be compensated in damages. We now come to the third finding of the learned Judge: "It does not appear that the oil required to fill the orders of the plaintiffs could not be procured." That is to say, the appellants had the oil but they chose, as already stated, to sell it to other people, and to sell it to other people buying at higher prices than they could get under their contract. These their Lordships think are important findings of fact which really dispose of this case, and they are the more important because the Court of Appeal adopts them and arrives at the same conclusion as that at which Mr. Justice Kent arrived. The effect of the judgment is this. There was a contract to deliver such oil as the respondents might call for for the purposes of their business. The learned Judge and the Court of Appeal have concurred in finding that the amount called for was a reasonable amount, having regard to the character of the business; they have concurred in finding that what led to the appellants not delivering it was the rise in prices and the presence of other customers; they have further held that the contract bound the appellants to make deliveries of oil, which they failed to make; that they have therefore committed a breach of the agreement, and that they are liable in the damages which have been assessed.

Their Lordships see no reason to dissent from these conclusions, and they will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

THE STANDARD OIL COMPANY OF NEW YORK

v.

T. AND M. WINTER.

DELIVERED BY VISCOUNT HALDANE.

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