
(1941) 02 CAL CK 0013
In the Calcutta High Court
Case No : Appeal No. 49 of 1939

The Standard Coal Co. Ltd., and Others APPELLANT
Vs
Valarshak Seth Apcar RESPONDENT

Date of Decision : 28-02-1941

Acts Referred:

Citation : (1941) 02 CAL CK 0013

Final Decision : Allowed

Judgement

McNair, J.—This is an appeal from a decree of this Court dated August 8th, 1939, in its Ordinary Original Civil Jurisdiction in favour of the Plaintiff Respondent for Rs. 34,934-8 together with interest and costs. The Plaintiff's claim is for brokerage in respect of a contract for coal dated April 29th, 1920. The decree also declared that the Plaintiff was entitled to remuneration in respect of all future deliveries of coal under the said contract.

2. The Plaintiff is a coal broker and he claimed brokerage at the rate of one anna per ton on a contract which he says originated through his introduction.

3. The Defendants, Appellants, are coal companies. They entered into two long-term agreements for the supply of coal to the Indian Iron and Steel Co., Ltd., one for 15,000 tons monthly for a period of 20 years from April 1st, 1923, and the other for 20,000 tons of coal monthly for the same period.

4. The contract for 15,000 tons was the subject-matter of a written agreement between the Plaintiff and the Defendants under which they agreed to pay to the Plaintiff, for his remuneration, brokerage at the rate of one anna per ton on all coal actually delivered under the contract.

5. The Plaintiff's case is that he was unaware of the second contract for the delivery of 20,000 tons, and he claims brokerage at the same rate in respect of this contract also.

6. There is no allegation of fraud, but the trial Judge has found that the two

contracts were embodied in separate agreements between the coal companies and the Indian Iron and Steel Co. "with the intention of concealing this fact" (i.e., the existence of the second contract) "from the Plaintiff, and so of avoiding any claim in respect of the 20,000 tons."

7. I find considerable difficulty in accepting this conclusion on the evidence and in the absence of any allegation of fraud or deceit.

8. The coal companies and the Indian Iron and Steel Co, were not strangers in business. There had been various transactions between their managing agents previous to 1920, but the Plaintiff's case is that he found out that the Iron and Steel Co. were in the market for coal, that he informed the coal companies of this fact and that having effected the introduction he is entitled to brokerage on all contracts that took place thereafter.

9. The question for determination is whether the Plaintiff is entitled to brokerage only in respect of the particular contract for 15,000 tons of coal which was effected after his introduction or whether he is entitled also to brokerage in respect of the further contract for 20,000 tons: that is to say, was the employment of the Plaintiff a general or a special employment? Both the contract for 15,000 tons and the contract for 20,000 tons were signed on April 29th, 1920, but the negotiations prior to their execution occupied several months.

10. The first point which arrests attention is the fact that the Plaintiff does not sue until 1937 in respect of a contract which is dated April 29th, 1920, and which according to the Plaintiff he brought into existence in December, 1919.

11. The Plaintiff's case is that he was unaware of the second contract until 1924, and that he took no steps even then to safe-guard his interests because he was satisfied with the integrity of the parties with whom he was dealing, and because at that time no deliveries of coal had been made under the contract.

12. I will deal with this matter later in detail, but it is at first sight surprising that a coal broker in a large way of business should not be aware of a contract of this magnitude which at that time was unusual in Calcutta; and that the Plaintiff in his plaint should allege that his brokerage was earned on orders secured and not on actual coal delivered.

13. The evidence regarding the negotiations in 1919 is conflicting. The principal actors were the Plaintiff; Mr. Wills, the Coal Manager of Messrs. Heilgers & Co., the Managing Agents of the coal companies; and Mr. Fairhurst, a partner in Messrs. Burn & Co., the Managing Agents of the Iron and Steel Co., and also a Director of the Iron and Steel Co. The negotiations leading up to these coal contracts took place in December, 1919. At that time Wills had conducted many business dealings with the Plaintiff whom he looked upon as a friend; he had also had business dealings with Fairhurst whom he had known for a number of years. Both Wills and Fairhurst had retired from India when the Plaintiff brought this suit, and their evidence had to be taken on commission.

14. It is common ground that the Plaintiff called on Fairhurst on December 2nd, 1919, in the ordinary course of business as a broker, and finding that Fairhurst wanted coal for the Indian Iron and Steel Co., the Plaintiff informed Wills on the same day and went with him to Fairhurst's office. The evidence is conflicting regarding this interview. The Plaintiff's case is that Fairhurst told him in the first instance that he wanted 40,000 to 50,000 tons of coal and that he reported accordingly to Wills who said he might be in a position to meet Fairhurst's requirements.

15. Wills's evidence is that the Plaintiff, after seeing Fairhurst, told him that the Indian Iron and Steel Co. wanted 12,500 to 15,000 tons of coke-making coal, and that after looking up his records and setting aside the amount required for regular customers and pending contracts, he found that he could supply that quantity. Wills then accompanied the Plaintiff to Fairhurst's office and after a general discussion regarding the supplying collieries and the seams of coal, he returned to his own office. He then discussed the matter with Sir Willoughby Carey, the senior partner of his firm, and sent the Plaintiff back to Fairhurst offering to supplying 15,000 tons of run of the mine coal at eight annas a ton above Railway rates for twenty years.

16. Fairhurst says that he told the Plaintiff at the first interview that he wanted about 15,000 tons. The total requirements of the Iron and Steel Co. were 35,000 to 40,000 tons, but they had already negotiated or concluded contracts for about 20,000 tons, and he is quite certain that at that interview he was not in a position to contract with Wills for more than 15,000 tons.

17. From the above outline of the early negotiations it is apparent that the Plaintiff's case is that the Iron and Steel Co. at the outset required 45,000 to 50,000 tons of coal, while the Defendants say that the Iron and Steel Co. at that date only required about 15,000 to 20,000 tons, and that the coal companies were not then in a position to supply more than that quantity.

18. The second contract, they say, only became possible at a later date when the Iron and Steel Co. had decided to expand their works, and the coal companies found surplus stocks on their hands through the failure of pending negotiations with another purchaser, namely, the Tata Iron and Steel Company.

19. It must be remembered that the witnesses were giving evidence of events which had happened nearly twenty years previously and admittedly their recollection was largely refreshed by, and possibly based on, a perusal of the contemporary correspondence, and the minutes of the meetings of the companies concerned.

20. The quantity of coal which the Defendant companies could supply at this date depended upon negotiations then proceeding between the coal companies and the Tata Iron and Steel Co., Ltd., who were large purchasers of coal. The Indian Iron and Steel Co.'s requirements were limited by the consumption of their plant which was very considerably increased in the following years, and it is necessary

to ascertain whether the ultimate expansion was contemplated at the time of the Plaintiff's introduction.

21. The Tata Iron and Steel Co., Ltd. were at this time by far the largest manufacturers of steel in India.

22. The Indian Iron and Steel Co., Ltd. was only incorporated in 1918. They had obtained some of their plant and they hoped to start production in 1921. The coal companies had in previous years supplied coal to Tata's under a long-term contract, and in September, 1919, Tata's had suggested a contract for the supply of 20,000 tons of coal per month for 25 years from April 1st, 1921.

23. The railways were the largest buyers of coal and the Railway Board each year fixed the price at which they were willing to purchase. Tata's being also large consumers of coal had in the past obtained their supplies at the rates fixed by the Railway Board. The coal companies in September, 1919, were asking eight annas a ton above Railway Board rates, but after a meeting between Wills representing the coal companies, and Tutwiler, the Manager of Tata's, Wills agreed in October to recommend to his Directors a contract to supply Tata's with 25,000 to 30,000 tons of coal monthly at Railway Board rates with a minimum rate of Rs. 3-12 per ton. Tutwiler wrote to Wills on December 1st 4th to say that his Board agreed to these terms, but Wills could not have received that letter before December 5th, and the terms had still to be approved by the coal companies' Directors.

24. On December 2nd, the Plaintiff saw Fairhurst and told Wills of the Indian Iron and Steel Co.'s requirements.

25. On December 19th the Directors of the coal companies met and had before them for consideration the two proposed contracts, one for 15,000 tons monthly for 20 years from April 1st, 1921, with the Iron and Steel Co., at eight annas per ton over Railway Board rates with a minimum of Rs. 4-8 per ton: the other with Tata's for 25,000 to 30,000 tons monthly from April 1st, 1925, at Railway Board rates with a minimum of Rs. 3-12. They approved the contract with the Iron and Steel Company and rejected the contract with Tata's at the prices suggested, but directed their Managing Agents to negotiate further with Tata's so as to obtain, if possible, similar terms to the contract concluded with the Indian Iron and Steel Co.

26. The minutes of this meeting are of importance as they show that even on December 19th the coal companies were trying to retain their connection with Tata's, a policy which they would be unlikely to adopt if they had known that the Indian Iron and Steel Co. were purchasers for a similar quantity at a higher rate.

27. Tata's refused to raise their price, and on January 29th they wrote to say that the proposed contract might be called off.

28. The Indian Iron and Steel Co., Ltd., as already stated, was incorporated in 1918, and Mr. Fairhurst was one of the original Directors and a partner in the

firm of Messrs. Burn & Co., their Managing Agents. From the minutes of a Board meeting of the company held on January 13th, 1920, it appears that the Managing Agents proposed to increase the capital of the company by Rs. 150 lakhs to enable the company to buy two more blast furnaces, foundry plant, etc. I will deal later with the reasons advanced in support of the proposal; it is sufficient to mention at this stage that the proposal was sanctioned, and it was decided to call a meeting of the share-holders to obtain the necessary authority. Fairhurst's evidence is that this proposal had never been entertained before December 20th, 1919, that it was first suggested about Christmas time, during the last week in December. It was at any rate prior to January 2nd, 1920, because on that date Wills wrote to Fairhurst asking him if he could now come to a decision regarding the further quantity of coal he was requiring. Fairhurst admits that this enquiry referred to a conversation with Wills regarding further purchases in the event of the Company's expansion, but he is quite positive that the question of expansion had never even entered his mind at the beginning of December.

29. Several reasons for expansion were placed before the Directors at the meeting of the 13th January. It was stated that the Company had secured its coal supplies for the existing plant for a period of from 13 to 30 years, and that it was in a position to purchase best Jherriah coking coal sufficient for doubling the size of the plant for 20 years ahead, and available supplies of this type of coal were rapidly disappearing in view of contracts being made by other large consumers.

30. The importance of the negotiations for a long term contract for the supply of coal by the coal Co.'s to Tata's and of the negotiations for expanding the Indian Iron and Steel Co. has been stressed by the trial Judge because "the present case turns to a large extent upon how much coal Fairhurst required and how much Messrs. Heilgers & Co. were able to supply" at the time when the Plaintiff first brought them together. The learned Judge is unable to accept Fairhurst's evidence and finds that the scheme for expansion "had been in his mind for a considerable time and certainly prior to the conversation with the Plaintiff at the beginning of December." It is true that Fairhurst refers to and relies on a personal letter (Q. 610) which he thought he had seen in the correspondence shortly before giving evidence, but, apart from that letter which was never identified and which is apparently not in evidence, he is positive that before December 20th there was no suggestion of increasing the plant, and his reason is that at the time of the interview in the first week of December he had already concluded or negotiated contracts for about 20,000 tons and the limit of his requirement was a further 15,000 to 20,000 tons and he was not in a position to buy further quantities.

31. This statement is supported by the minutes of the Board meetings which show that by the end of July, 1919, the Indian Iron and Steel Co. had contracted for the supply of 21,750 tons of coal per month from a number of separate

collieries.

32. In his letter to Wills dated the 3rd December, 1919, Fairhurst writes: "Reference to our discussion yesterday : I understand from the broker that you are agreeable to make the contract herewith for 20 years and for the quantity to be minimum 12,500 maximum 15,000 tons monthly." After stating that he does not consider it would be good business to pay more than Tata's, he continues: "Another point is, I would like the agreement to contain an option for us to extend the contract for a further 20 years." This letter seems to refer to all the points raised in the discussion the previous day, viz.: the term, the quantity, and the price and if the possibility of a further large quantity being required had been discussed, it seems to me unlikely that Fairhurst would not have asked for an option on such further requirements just as he asks for an option to extend the time of the contract for his present requirements, and this more particularly if he knew, as is suggested, that Wills's contract for 20,000 tons with Tata's had not passed the stage of negotiation.

33. According to the Plaintiff Wills in answer to Fairhurst's enquiry had said that he could only "do 12,000 to 15,000 tons at the time," yet nowhere in the correspondence before January 2nd is there a suggestion that the balance asked for was required or could be supplied. The Plaintiff admits that his claim to brokerage depends on Fairhurst's alleged original enquiry for 40,000 to 50,000 tons, but he can give no explanation why it was not mentioned either to Mr. McKerrow in March, 1937, when the claim to brokerage was first made, or in his solicitors' letter setting out his case, or even in his pleadings. In fact the statement was only made for the first time in Court after the Plaintiff had seen the whole of the defence, evidence both oral and documentary. The learned trial Judge has referred to the disadvantage in which he was placed by reason of the entire defence evidence being taken on commission and he states that he has been driven to rely to a large extent upon probabilities deduced from admitted facts. This Court is in a similar position except that it has the further disadvantage of not having seen the Plaintiff in the witness-box, but from the facts to which I have referred it seems to me highly probable that the statement attributed to Fairhurst that he wanted 40,000 to 50,000 tons at the beginning of December and that Wills said he could meet that offer, was an after-thought introduced by the Plaintiff only when giving evidence and had no foundation in fact. A feature of the case which is apparent at the outset is the way in which the Plaintiff has varied his case from the statements made in his pleadings. The learned Judge had the advantage of seeing the Plaintiff in the witness-box and was favourably impressed with his demeanour; but time and again the Plaintiff has had to admit that his recollection was at fault and the surrounding circumstances, in my opinion, make it very difficult to accept his case as true.

34. In the first place the Plaintiff in his pleading claims brokerage on all orders secured through his introduction.

35. That plea has never been established and is in fact at variance with the

written agreement for brokerage on the 15,000 ton contract which provides only for payment of brokerage on all coal actually delivered under the contract.

36. Again, the plaint alleges that the Plaintiff's employment was in February, 1920. That date is at variance with the correspondence and has been abandoned and the case fought on the basis of a concluded contract of employment in the first week of December, 1919.

37. Again the plaint alleges an agreement to "introduce purchasers" generally, the case at the trial was an agreement to introduce a specific purchaser.

38. It has been suggested that these discrepancies are due to the length of time that elapsed between the contract and the suit. That may be so, but it must also be remembered that the Plaintiff comes to trial with a specific case and that in order to succeed he must establish the case alleged.

39. The delay that has occurred in filing this suit is the fault of the Plaintiff and it has in my view an important bearing on the probabilities of the case.

40. The introduction took place on the 2nd December, 1919. The suit was brought in November, 1937. The two coal contracts were executed on April 29th, 1920, and the Plaintiff's brokerage agreement on May 31st, 1920. The Plaintiff's story is that he knew nothing of the 20,000 ton contract before 1924 or 1925. The Plaintiff had called on Mr. McKerrow, an assistant in Heilgers & Co.'s coal department. "We were talking," says the Plaintiff "about deliveries of this Indian Iron and Steel Co., and he said: "Well, deliveries are not so very good at the moment because the Company is not doing so well." He said: "By the way have you seen the contract"? I said: "No, I was told I will get a copy of the agreement between them, but I was not supplied with one." So he said: " Would you like to see it"? I said: "Yes." He produced the two contracts and placed it in front of me on the table. I looked at it. I turned over the pages backwards and forwards and I could see two contracts there. The terms were the same, the rates the same, everything identically the same save and except the quantities, one was 15,000 tons and the other 20,000." The witness was asked: "What happened then"? He replied --"Naturally I was surprised, and I told Mr. McKerrow on these two contracts here. I was all along told that there was one contract for 15,000 tons. I was surprised, because in my agreement it was mentioned 15,000 not 35,000, the quantity of the two contracts. Then he said: "It is no use worrying about it. As a matter of fact we are not delivering anything on this contract. We are just working out the first contract and later on after we finish the contract we will carry on with the other contract." I said: "I expect I will get brokerage on this." On this nothing more was said and the matter was dropped."

41. The Plaintiff's evidence was, further, that Wills had retired from Heilger's in 1923 and was staying with the Plaintiff as his paying guest in 1924 and that the moment he knew there was another contract he "tackled Wills about it." He did not however see Fairhurst. Wills said--" Don't worry about it, there are no deliveries and the chances are there will be no deliveries at all against that

contract."

42. This is another instance of the inconsistency of the Plaintiff's story, for in the particulars of his pleadings he says that McKerrow was at the time acting for Wills who was Home on leave. If that were so, the Plaintiff could not possibly have "tackled Wills about it at once."

43. In fact Wills was not at home or on leave: he had resigned from Heilger's and was in Calcutta staying with the Plaintiff; and his evidence is that the Plaintiff did mention having seen the contract in McKerrow's office, and that it had been a subject of discussion ever since 1920. The Plaintiff then says that he "came to know quite accidentally some time probably in 1932 or 1933 that deliveries were being made under the 2nd contract." In cross-examination he abandons that answer and says that he was told of the deliveries by McKerrow in 1937.

44. His practice was to send his brokerage bills in blank to Heilgers & Co., for them to fill in the sum due for brokerage in accordance with deliveries made. Although on his own evidence he knew in 1932 that deliveries were being made he never took the trouble to find out if the sums paid included brokerage for deliveries under the 2nd contract nor did he notify Heilgers that he claimed brokerage there under even though he had no specific agreement in regard to it.

45. The Plaintiff first put forward his claim to brokerage under the 2nd contract by his letter of March 8th, 1937. This letter, he says, was to obtain an assurance that he would in due course obtain his brokerage. If he wanted such an assurance in writing in 1937, why did he not want it in 1924?

46. Messrs. Heilgers replied that they did not understand the letter and on March 15th the Plaintiff again wrote claiming brokerage under the 2nd contract and stating that the existence of this contract had been kept secret. The Plaintiff however on his own evidence was aware of it in 1924, and, if Wills's evidence can be accepted the Plaintiff had voiced his grievance even before that date that the coal companies had entered into two contracts with the Indian Iron and Steel Co., but that he had only been allowed brokerage on the one. After stating repeatedly in his evidence that he knew that deliveries were being made on the 2nd contract from 1932 onwards the Plaintiff at a late stage in answer to a question from the Court, changed his story and said that he only got this information in 1937. Even if we discard the evidence of Wills we have it from the Plaintiff's own evidence that he knew of the second contract so early as 1924 or 1925 and that he knew deliveries were being made under this contract at least from 1933. When we consider further that the Plaintiff was a coal broker in a large way of business it seems inconceivable that he would not know in the market that a contract of this magnitude had been put through and that the limited supplies of coking coal on which brokerage might be earned had thereby been reduced.

47. The delay in putting forward this claim to brokerage leads to the conclusion

that the Plaintiff knew throughout that he had no legal right to it.

48. Under the 15,000 ton contract the Plaintiff was to receive about Rs. 940 a month for 20 years. Deliveries started in 1923, and by 1937 the income from that contract was coming to an end. The Plaintiff was then retiring or had retired. Deliveries under the second contract had only recently commenced, and if he could substantiate his claim he could look forward to a further Rs. 1,250 a month for another 15 years. Wills and Fairhurst had both left India and the coal companies might have difficulty in rebutting the claim and might well accede, to the Plaintiff's suggestion that they should either pay or settle. This theory supplies a plausible reason for the launching of the suit at this late date whereas the Plaintiff's explanation that he was ignorant of his rights, and that when he knew of them he did not press them because of his implicit trust in the Defendant's reputation for fair dealing, is difficult to accept. Wills and Fairhurst had both left this country and were living in retirement in England. Wills had parted from his firm after disagreement, and he was an intimate friend of the Plaintiff who admits that he can give no explanation why Wills should make a false statement. Neither Wills nor Fairhurst had any interest in the result of the suit and there is no apparent reason for them to give false evidence.

49. The Plaintiff on the other hand would secure a very substantial income for a number of years if he could establish his claim. The Plaintiff was a shrewd business man as appears from the attitude he adopted in respect of the 15,000 ton contract. The ordinary brokerage contract was in the form adopted by the Indian Mining Association and consisted of bought and sold notes. The Plaintiff refused to adopt this form but said that he wanted a special contract for which he was willing to pay. The agreement of May 31st, 1920, was accordingly drawn up by Messrs. Orr, Dignam & Co., the Solicitors to the coal companies, and was altered and approved by the Government Solicitor, Mr. Eggar, on behalf of the Plaintiff.

50. The agreement contemplates one single contract for 15,000 tons. Mr. Eggar, on the Plaintiff's instructions, altered the draft so as to preserve the Plaintiff's rights in the event of the contract being substituted by another, and to enable that the brokerage should continue to be payable notwithstanding the Plaintiff's death. There is no suggestion of an agreement as put forward by the Plaintiff that he was entitled to brokerage in respect of all orders for coal secured by the coal companies as a result of his introduction.

51. This is the case which is now set up and which would be tantamount to a plea for rectification of the contract, but there is no supporting plea of fraud or mistake.

52. I have already referred to the contradictions between the case put forward by the Plaintiff in his plaint and the case he sought to prove in Court, and I have drawn attention, to his statement that Wills was on leave in 1924 when he interviewed McKerrow, coupled with his statement that he went straight back

from McKerrow's office and tackled Wills. There are many other occasions when the Plaintiff replies that he cannot remember. I will refer only to one more passage in his evidence which suggests a lack of candour. He was asked what Wills was doing from 1924 to 1926 when Wills was staying with him as his paying guest. He repeatedly stated both to the Court and to Counsel that he did not remember and could not tell. He admitted on being pressed that Wills had joined another firm of Carey and Daniels where he was in charge of their coal business and where the Plaintiff called very frequently. I find it impossible in view of evidence of this description, to agree with the learned Judge's conclusion that the Plaintiff had a good memory for facts though not for dates. The Plaintiff alone gave evidence in support of his claim. He had no documentary evidence and his note books are said to have been destroyed. The Defendant companies have produced the correspondence and the minutes of their companies' meetings dealing with all the material facts, and those documents in my opinion corroborate the Defendant companies' case and negative the case of the Plaintiff.

53. The learned Judge rejects the evidence of Wills and Fairhurst partly on the ground that their interest in the matter cannot have been anything like so important to them as to the Plaintiff. That may be so, but since they had nothing to gain or lose one way or the other it is difficult to understand why they should make definite statements in contradiction of the Plaintiff when one or the other must be deliberately untrue. Wills for instance has stated that just before he left India in 1932 the Plaintiff came to him in hospital and asked him to make a statement to enable him to claim brokerage; that he agreed, but told the Plaintiff that it would not do him an iota of good. This the Plaintiff denies. The episode was recent, and either the story was invented by Wills or the Plaintiff's memory is not so clear as is suggested.

54. The learned trial Judge comments on the coincidence that the quantity of coal required by the Iron and Steel Company agreed with the quantity which the coal companies could supply. The figures do not appear to me to be exact. Fairhurst at first wanted 15,000 tons and Wills could offer from 12,500 to 15,000 tons. The quantity available was approximate and depended on whether the purchasers would accept coal from certain seams. The Indian Iron and Steel Company were more particular in this respect than Tata's. Again the finding is that "Fairhurst wanted 20,000 tons and that was exactly the amount which Wills had to sell after refusing Tata's offer." Wills in fact was negotiating with Tata's for the sale of 25,000 tons.

55. The learned Judge holds that the two contracts were substantially part of and the result of one negotiation. Once more I find myself unable to accept his finding. The documentary evidence is confined almost entirely to the 15,000 ton contract. When the 15,000 ton contract had been approved Fairhurst was still negotiating for the 20,000 ton contract at a lower rate, namely, 4 as per ton over railway rates. If I am right in my view of the evidence regarding the interview of December 2nd and 3rd, 1919, the second contract was not then in the

contemplation of either Wills or Fairhurst and in the letter of 19th January, 1920, the discussion relates to a proposal by Fairhurst of a contract for a period and at a rate different from the terms of the 15,000 ton contract. I have little hesitation in accepting the Defendant company's story that the Indian Iron and Steel Company's requirements at the time of the Plaintiff's introduction were not more than 15,000 tons and that the coal companies were not then in a position to supply a larger quantity, and I find it impossible to believe that the Plaintiff who took such care to safeguard his every possible interest in his brokerage agreement, would have taken no steps whatever for 17 years to insure payment of his brokerage had he thought that he was legally entitled to it under the 20,000 ton contract.

56. The onus is on the Plaintiff to prove his case. He has not proved the case that he made in his plaint, i.e., that he was employed to introduce purchasers and was to be paid on all orders which might be secured as the result of such introduction. Nor has he established, in my opinion, the case that he sought to make at the trial, namely, that he was employed in connection with the 20,000 ton contract and was to be paid brokerage on all deliveries made under that contract. The true facts appear to me to be that the Plaintiff heard that the Indian Iron and Steel Co., would purchase about 15,000 tons of coking coal. He mentioned this to his friend Wills and brought Wills and Fairhurst together. The Plaintiff had then effected the introduction and earned his commission and I am satisfied that he took little or no part in the negotiations which resulted in either contract.

Wills and Fairhurst had known one another in business for years. The Plaintiff did not see Fairhurst after December 5th. Wills saw him frequently. The 20,000 ton contract gradually evolved and was the subject-matter of separate negotiations. The 15,000 ton contract was approved by the directors in December, 1919; the 20,000 ton contract only came before the directors in the shape of an option a month later. The 15,000 ton contract was to start from April 1st, 1921. The 20,000 ton contract from April 1st, 1922, and the price of the latter was still the subject-matter of negotiation when the first contract was settled. Owing to delay in delivery of the Steel Co.'s plant the dates for the commencement of both contracts had to be postponed, but the form of contract had been discussed and settled in regard to the 15,000 ton contract and it was quite natural that the two documents should be drafted and signed at the same time. Considered from one point of view the two contracts both resulted from the Plaintiff's introduction, for it is probable that the second contract came into being as a result of the negotiations over the first contract. That does not, however, entitle the Plaintiff to commission. In the words of Lord Watson in *Toulmin v. Millar* L.R. 12 A.C. 746: 58 L.T.N.S. 96 (1887).--"In order to found a legal claim for commission there must not only be a causal, there must also be a contractual relation between the introduction and the ultimate transaction of sale."

57. If the Plaintiff had a general employment to find purchasers for the coal

companies and thereafter gave the introduction which resulted in several contracts, he would no doubt be entitled to his brokerage because he had implemented his contract by giving the introduction. As I read the evidence that was not the manner of the Plaintiff's employment. He introduced Wills to Fairhurst for the specific purpose of effecting the sale of about 15,000 tons of coal and once that sale was effected he had earned his brokerage and was not entitled to any further remuneration, however many contracts the parties might conclude.

58. The appeal must be allowed and the decree of the trial Court set aside. The Appellants are entitled to their costs including all reserved costs throughout.

Derbyshire, C.J.

I agree.