

Legal Matters.

WILKINSON v. SCIENTIFIC PRESS, LTD.

This was an appeal from the judgment of Mr. Justice Ridley given in favour of the defendant company dismissing the plaintiff's action with costs. Mr. Stewart Smith, K.C., and Mr. Adam Walter appeared for the plaintiff, and Mr. Horne Williams, K.C., and Mr. Hemmerde appeared for the defendant company. The circumstances were as follows:—The plaintiff was engaged as a canvasser for advertisements for the periodical paper called *The Hospital*, belonging to the Scientific Press, Ltd., of which company, defendants' counsel stated, Sir Henry Burdett was the chairman and principal shareholder. The terms of the employment of the plaintiff were embodied in an agreement dated July 3rd, 1899, and by the terms of that agreement the plaintiff Wilkinson was entitled to a commission at certain rates, varying according to the quality of the advertisements, upon all advertisements procured by him and accepted by the defendant company; the commission, according to the terms of the agreement, was not presently payable but was payable by instalments. That agreement was put an end to summarily by the defendant company on November 20th, 1899. During the currency of it the plaintiff had procured advertisements for the *Hospital* which were accepted by the defendant company, and had earned, as admitted by the defendant company, the sum of £110 1s. 5d. as commission under that agreement. The defendant company having received for the advertisements upon which that commission was based £889.

After the determination of that agreement the plaintiff again entered into the employment of the defendant company as canvasser under another agreement, dated December 4th, 1899, which stated that the employment thereunder was to commence on November 20th, 1899, which was the date of the determination of the agreement of July 3rd, 1899.

The agreement of December 4th, 1899, contained the following clause:—"Either party may determine this agreement at any time by giving to the other three calendar months' notice in writing, and the company may determine the agreement summarily if the canvasser shall misconduct himself or become incompetent or be negligent in the performance of his duties, and if the company shall so determine this agreement summarily, the canvasser shall have no claim against the company hereunder for compensation or remuneration, whether by way of percentage, bonus, or otherwise in respect of any advertisement which may appear after the date of such determination, whether the orders for such advertisement be a new order, or a renewal, or a 'T. C.' order, or a current order or otherwise, or in respect of any business transacted by him before or after the date of such determination."

This agreement was also determined summarily by the defendant company on January 16th, 1900, not for any dishonourable conduct of the plaintiff, but for a cause which, unfortunately, is too common among canvassers, and the defendant company, although they had re-engaged the plaintiff, claimed to forfeit for their benefit and put into their own pocket the sum of £63 17s. 6d. commission admitted by them to have been earned under that agreement, the defendant company having received for advertisements upon which that commission was based £670, and they also claimed to forfeit and put into their own pocket the said sum of £110 1s. 5d., earned under the agreement of July 3rd, 1899. This the defendant company claimed as a right under the clause above set out, and if not under that clause, then under an alleged collateral verbal agreement, and as evidence of that verbal agreement a letter was read from the plaintiff to the defendant company, by which letter the plaintiff asked the company not to deprive him of his hard-earned commissions and thereby disable him to meet the liabilities he had incurred upon the faith of having earned the money, and the company answered by simply referring the plaintiff to the terms of his agreement, meaning the agreement of December 4th, 1899. The Court (the Master of the Rolls, Lord Justice Matthew, and Lord Justice Cozens-Hardy) were unanimously of opinion that if there had been any such agreement to deprive the plaintiff of the commissions earned under the agreement of July 3rd, 1899, in the event of his being summarily dealt with under the agreement of December 4th, 1899, the same would have been excessively unreasonable and that they would have had to look very carefully into the agreement to ascertain whether the defendant company had any such right. They found that there was no evidence, whatever, of any such collateral agreement, that there was no ambiguity whatever in the clause set out as above, that it was perfectly clear that the same referred only to the commissions earned under the agreement of December 4th, 1899, and that agreement only, and not to the instalments of commissions remaining unpaid under the agreement of July 3rd, 1899, and the court allowed the plaintiff's appeal, and ordered that the judgment of Mr. Justice Ridley be wholly set aside, and instead thereof that judgment in the action be entered for the plaintiff against the defendants for the sum of £110 1s. 5d., with costs of action and of appeal.

In Memoriam.

BURNETT.—On April 11th, at the Hospital for Consumption, Brompton, S.W., of pneumonia and pleurisy, Sister Florence Marion, aged 36 years, second daughter of Alexander S. Burnett, of 33, Woodhurst Road, Acton, W., formerly Actuary of the Barbados Mutual Life Assurance Society.

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