

thing which should take away his property from the intended object of his bounty should be something happening during his own lifetime, and therefore they have no reference to the subject-matter with which we are dealing. To my mind the reasoning of Vaughan Williams and Stirling, L.JJ., as to the intention of the testator is perfectly satisfactory. I think their judgment quite right, and I move your Lordships that it be affirmed, and the appeal dismissed.

LORD MACNAGHTEN—I am of the same opinion. I agree with the majority of the Court of Appeal, and I think that in this particular will the marriages forbidden are marriages taking place after the testator's death.

LORD JAMES OF HEREFORD and LORD LINDLEY concurred.

Appeal dismissed.

Counsel for the Appellants—Levett, K.C.—Iselin. Agent—John F. Child, Solicitor.

Counsel for the Respondent—Upjohn, K.C.—E. Clayton—W. A. Russell. Agents—Ward, Perks, & M'Kay, Solicitors.

## HOUSE OF LORDS.

Friday, March 24.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, James of Hereford, and Lindley.)

OGDENS LIMITED *v.* NELSON.  
OGDENS LIMITED *v.* TELFORD.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

*Contract—Construction—Breach—Contract whereby Seller Promises Buyer Bonus for next Four Years—Seller meanwhile Disposes of Business—Damages.*

A, a company of wholesale tobacco manufacturers, issued a circular to retail dealers offering them a share in a bonus on condition of their signing an agreement, *inter alia*, not to deal with B Limited. B Limited, in response, issued a circular offering to customers buying direct from them a share in a bonus distribution of "our entire net profits and two hundred thousand pounds per year for the next four years." The offer was accepted by C and D in a letter recapitulating the terms of the offer and stating that in consideration of it they agreed not to sign any agreement with A or any agreement with any company which might prevent them dealing with B Limited. Before the four years expired B Limited sold their business to A.

Held that B Limited, having put an end to an agreement which was to continue for four years, were liable in damages to C and D for breach of con-

tract to the extent of the bonus which the latter would have received had B Limited continued their business.

The Imperial Tobacco Company of Great Britain and Ireland, Limited, offered to various tobacco dealers, including the respondents in this appeal Messrs Nelson and Telford, in consideration of their selling the goods of the company and undertaking not to buy any goods from Ogdens Limited and certain other companies, a share in a bonus of £50,000 and in certain expected profits of the company.

Ogdens Limited, in order to outbid the Imperial Tobacco Company, made the following offer by letter to a large number of tobacco merchants, including Messrs Nelson and Telford:—"Bonus Distribution—Our entire net profits and two hundred thousand pounds per year for the next four years. Commencing April 2, 1902, we will for the next four years distribute to such of our customers in the United Kingdom as purchase direct from us our entire net profits on the goods sold by us in the United Kingdom. In addition to the above we will, commencing April 2, 1902, for the next four years distribute to such of our customers in the United Kingdom as purchase direct from us the sum of two hundred thousand pounds per year. Distribution of net profits will be made as soon after April 2, 1903, and annually thereafter, as the accounts can be audited, and will be in proportion to the purchases made during the year. Distribution as to the two hundred thousand pounds per year will be made every three months, the first distribution to take place as soon after July 2, 1902, as accounts can be audited, and will be in proportion to the purchases during the three months period. To participate in this offer we do not ask you to boycott the goods of any other manufacturers."

Messrs Nelson and Telford accepted the offer by letter in the following terms:—"I beg to inform you that I have not signed the agreement with the Imperial Tobacco Company, Limited, dated March 1902, and in consideration of participating in your bonus distribution of the entire net profits on goods sold by you in the United Kingdom and two hundred thousand pounds per year for the next four years as set out in your particulars, I hereby agree not to sign it or any similar agreement with the Imperial Tobacco Company, Limited, or any other company or firm, containing any conditions which would prevent me from buying, displaying, selling, or distributing your goods or the goods of any other manufacturer, and I also undertake to continue to buy, display, and sell your goods."

In accordance with the bargain so made, Messrs Nelson and Telford dealt with Ogdens Limited, and in July 1902 received their proportion of bonus up to that date. On September 27, 1902, Ogdens Limited sold their undertaking, including the goodwill of their business in Great Britain, to the Imperial Tobacco Company. Messrs Nelson and Telford were paid their share of bonus down to the date of sale, and were thereafter informed by letter from Ogdens

Limited that their bonus scheme had ceased, as they were no longer in business.

In the present action Messrs Nelson and Telford, *inter alia*, claimed damages against Ogdens Limited for breach of contract, contending that they were entitled to enjoy the advantages secured to them under the contract for a period of four years.

LORD ALVERSTONE, C.J., gave effect to their contention, and his judgment was affirmed by the Court of Appeal (COLLINS, M.R., ROMER and MATHEW, L.J.J.).

Ogdens Limited appealed to the House of Lords.

At the conclusion of the argument:—

LORD CHANCELLOR (HALSBURY)—In this case I am of opinion that the judgment of the Court of Appeal was right and ought to be affirmed. I very much doubt whether in dealing with this contract one can get very much light from other cases deciding other questions of contract. I do not think that the question here depends upon how much you can imply, because that part of the contract on which I rely and on which the Court of Appeal relied is that which is express. The circumstances of the case are such that I think that we are entitled to look at the nature of the contract in order to render its language intelligible. It is sufficiently clear that a certain offer was made by a rival association to do what was called "capture" the tobacco trade, and the traders in tobacco were called upon by the two rival associations to make terms with them. One association offered them that for a named period—viz., for four years—they would give one-fifth of the profits and distribute £50,000 as a bonus, upon which the rival company telegraphed to these customers advising them not to sign the Imperial Tobacco Company's agreement, saying that they would receive the appellants' circular in the morning. The circular followed which formed the offer afterwards accepted. The appellants offered a bonus distribution of "our entire net profits and £200,000 a year for the next four years." How is it possible, in view of that, to talk about there being no bargain in respect of the matter? It appears to me that it is a definite offer, and that the distribution was to be made by the company for the period of four years. The acceptance seems to me to be equally free from doubt. It is to be observed that their acceptance was prepared for the signature of the intended customers by those who themselves made the offer, so that it is their own letter which they got the customer to sign. How does the letter read? "Dear Sirs,—I beg to inform you that I have not signed the agreement with the Imperial Tobacco Company, and in consideration of participating in your bonus distribution of the entire profits on goods sold by you in the United Kingdom and £200,000 per year for the next four years I agree not to sign it or any similar agreement with the Imperial Tobacco

Company or any other company containing any condition which would prevent me from buying, displaying, selling, or distributing your goods or the goods of any other manufacturer, and I also undertake to continue to buy, display, and sell your goods.—(Signed) E. Nelson, 100 Queen Street, Cardiff." It seems to me that when once the bargain was made between the parties, whatever else might happen, there was undoubtedly not an implied, but an express, contract to distribute for four years £200,000. I cannot entertain a doubt that the meaning of the contract was that it was to last for four years. The counter claim is equally good. The customer says:—"I have signed this. I have performed my part of the contract. Perform yours." It may be that he cannot compel them to carry on their business or prevent them from selling it, as they did. But having done so, they are bound to pay damages consequent upon their putting an end to the agreement which by express bargain was to continue for four years. They are bound to compensate the person claiming his proportionate share of the £200,000 to be annually distributed if they put it out of their power to carry on the business in such a way as to defeat the agreement. Under these circumstances I consider this document without any reference to other documents, because I am very jealous against trying to interpret one contract by another which may be made under different circumstances. Looking at this contract alone, I cannot entertain a doubt that there has been a breach of contract, and therefore I move your Lordships that this appeal be dismissed with costs.

LORD MACNAGHTEN—I am of the same opinion. The circumstances of the case are so remarkable that at first I had a doubt whether the contract could be construed as a serious business document at all; there appeared to be such an element of speculation about it. But, upon further consideration, I am convinced that it was intended as a serious offer, and was taken seriously by those who responded to it.

LORD JAMES OF HEREFORD and LORD LINDLEY concurred.

Appeal dismissed.

Counsel for the Appellants—Asquith, K.C.—F. E. Smith (Rufus Isaacs, K.C., and Hemmerde with them). Agent—A. Middleton Rickards, Solicitor.

Counsel for the Respondent (Nelson)—J. Eldon Bankes, K.C.—Randolph. Agents—Smith, Rundell & Dods, Solicitors.

Agents for the Respondent (Telford)—Bell, Brodrick, & Gray, Solicitors.