powers in the present case. He knew the terms of the plaintiff's contracts and of the contract with the Neilsons. He had the evidence of his senses that the plaintiff, through a person apparently acting for him, was not only misleading the public, but inducing the public to believe the plaintiff had the privilege in 1912 which he had enjoyed in previous years of selling ice cream in cones. The actual sales of a fruit ice in the cones may not have been upon a strict construction any infringement upon the Neilsons' rights, but the pretence might properly be regarded as such.

It may be pointed out that the question is not what is in fact the true construction of the words "frozen fruits" in the concessions held by the plaintiff, but whether Dr. Orr acted in good faith and after proper investigation in the interpretation which he in the exercise of the discretion vested in him by the plaintiff put upon the words.

I think Dr. Orr was not bound to do anything which he did not do, and that he acted throughout reasonably and in good faith.

The numerous cases cited are not very helpful. There is no attempt to oust the jurisdiction of the Courts. What the parties did was to establish a domestic forum for the settlement of the questions that might arise between them, and that forum having acted with judgment and discretion, in the way the parties agreed it should have power to act, the dispute cannot be litigated.

A case much in point is *McRae* v. *Marshall* (1891), 19 S. C. R. 10, reversing the judgment of the Court of Appeal, 17 A. R. 139, and the Divisional Court, 16 O. R. 495, and restoring the judgment of the trial Judge, the late Mr. Justice Rose. But even in the Courts whose decisions were reversed the ground upon which it was thought the plaintiff was entitled to succeed was that the defendant had acted arbitrarily and not in good faith and without giving the plaintiff an opportunity to be heard. In the present case none of these circumstances exist, and the plaintiff cannot go behind his contract.

See also *Farquhar* v. *Hamilton* (1892), 20 A. R. 86, and *Good* v. *Toronto, Hamilton & Buffalo Rw. Co.* (1898), 26 A. R. 133.

The action fails, and is dismissed with costs.

Stay of thirty days.