

the defendants contested the plaintiff's right, and as already mentioned made sales after being notified of the infringement.

The appeal should be dismissed with costs.

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NOVEMBER 15TH, 1909.

GLEDHILL v. TELEGRAM PRINTING CO.

*Principal and Agent—Agent's Commission on Advertising Secured for Principal—Contract of Agency—Construction—Advertising "Originating in his Territory" — Defining Clause — "Final Contract"—"Insertion Order."*

Appeal by the defendants from an order of a Divisional Court, 13 O. W. R. 1000, affirming an order of MULOCK, C.J.Ex.D., upon an appeal from the report of an official referee.

The sole question upon the appeal was whether the defendants were rightly found liable to pay commission in respect of a contract for advertising in the defendants' newspaper, published in Winnipeg, entered into between the defendants and the T. Eaton Co. on the 1st September, 1904.

Under the agreement between the defendants and the plaintiff, the latter's compensation was to be fixed by reference to the amount paid to the defendants for advertising originating in his territory, that is, in the province of Ontario, including the city of Toronto.

The plaintiff's compensation was 20 per cent. of the net amount paid to the defendants for advertising originating in the plaintiff's territory.

The agreement between the defendants and the plaintiff contained the following clause: "Business originating in Toronto as above mentioned is to be further defined as business for which the final contract or insertion order is sent from a Toronto office, either direct from the advertiser or through a Toronto advertising agency."

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

A. H. F. Lefroy, K.C., and J. E. Jones, for the defendants.

G. H. Kilmer, K.C., and J. A. McAndrew, for the plaintiff.

Moss, C.J.O.:—Was the advertising done under the agreement with the T. Eaton Co. "advertising for which the final contract or