

did not transcend what is allowable under the authorities: *White v. Mellin*, [1895] A.C. 154; *Hubbuck & Sons Limited v. Wilkinson Heywood & Clark Limited*, [1899] 1 Q.B. 86; *Cundy v. Lerwill and Pike* (1908), 99 L.T.R. 273; *Spalding v. Gamage Limited* (1915), 32 R.P.C. 273, 283, 284 (H.L.)

The two claims urged by the respondent company were that the appellant should be restrained from representing that the respondent company had gone out of business and that the appellant had taken it over, and from using the formulæ and trade secrets of the respondent company.

Pringle, the appellant's traveller, represented to Smith that the respondent company had sold out; to Parks, that the appellant had taken over the business of the respondent company; and to Martin, that the respondent company was out of business. The only possible damage arose out of the Smith order, which, however, was given after an explanation that the appellant's feed was just as good as the respondent company's, except for one ingredient. The loss to the respondent company on this order would be only the 115 lbs. which that company gave Smith when the appellant's feed was returned, worth \$5.75, and the profit on the remaining 85 lbs., say \$2.25. If the respondent company could recover, its damages should be limited to \$8. The misrepresentation was actionable, provided damage was proved: *White v. Mellin*, *supra*; *Ratcliffe v. Evans*, [1892] 2 Q.B. 524.

The misrepresentation was made in the course of the agent's employment, in the situation in which he was placed by his employer, and was part of the inducement which caused the contract to be made. It caused damage, though only to a small extent, and the principal retained the benefit received under it. It afforded a cause of action, and the respondent company should recover the damages suffered thereby: *Refuge Assurance Co. Limited v. Kettlewell*, [1909] A.C. 243.

What was objected to as regards the formulæ and secrets was, that they were in use by the partnership in which the respondent company's predecessor and the appellant were members; and that the latter, having sold out his interest therein, was disabled from using his knowledge as such partner. The respondent company put it in two ways—one that the appellant occupied a confidential position when he acquired knowledge of the formulæ, and the other that he sold out whatever rights he had in them and could not derogate from his grant. The two positions were inconsistent. That the appellant was not using the identical formulæ was established by his evidence, and there