

the court could enforce, since no condition attached to tobacco passing from hand to hand. The real question was: Was there a contract between the plaintiffs and the defendants? There was clearly no direct contract, but the condition being relied on, that on purchase by a retail dealer through a wholesale dealer the latter was to be deemed the plaintiffs' agent, the learned judge pointed out that the plaintiffs sold their goods out and out to the wholesale dealers, who bought and sold them for their own profit and not as agents for the plaintiffs. This was the true effect of what actually took place, and the mere insertion in the condition of the words that the wholesale dealer was deemed to be an agent did not make him such when in fact he was not.

The principles enunciated by Mr. Justice Swinfen Eady were affirmed by the Court of Appeal in the subsequent case of *McGruther v. Pitcher* (91 L.T. Rep. 678; (1904), 2 Ch. 306). There the plaintiffs, who were manufacturers of revolving heel pads under license from the owner of the patent, sought to enforce against retail dealers certain conditions of sale they had had printed on the boxes in which the heel pads were packed when sold. The conditions provided that the goods were not to be retailed at less than a fixed price, and that the acceptance of the goods by any purchaser was to be deemed an admission that he agreed to be bound by the conditions. The plaintiffs sold large quantities of these revolving heel pads to factors for resale by them. It was alleged that the defendant when purchasing the goods from one of the plaintiffs' factors had accepted the conditions. Upon the question whether these conditions were binding on the defendant, the Court of Appeal held that a vendor could not by printing a condition upon some part of the goods, or on the case containing them, say that every subsequent purchaser of the goods must comply with it. Conditions could not be made to run with the goods in that way. The court held there was no evidence of the defendants having entered into any direct contract with the plaintiffs, and if there had been a contract between the defendant and the factor which was not found, the