

be confused with the right of the employer to recover from his agent the commission or other benefit which the agent had a right to receive only for his master's benefit, as in *Hippisley v. Knee Brothers*, [1905] 1 K.B. 1.

In this case, the defendant neither paid nor agreed to pay Derocher anything for his services; the defendant paid his expenses out of pocket in the "canned goods" business; the "splitting" of the commission with the plaintiff company's brokers was one of those things that are "very common in mercantile business;" the men were on most familiar and confidential terms with one another; it was impossible to believe that the commission received was a secret one, or that there was anything like fraud or bad faith in its payment; and the defendant had notice of it in a communication addressed to him in the name of his firm, but with the words "Attention personal Mr. Derocher" on the envelope.

Again, there was no reason why the plaintiff company should be made liable for its brokers' wrongdoing, if it was wrongdoing. Reference to *Barwick v. English Joint Stock Bank* (1867), L.R. 2 Ed. 259; *S. Pearson & Son Limited v. Dublin Corporation*, [1907] A.C. 351. It might be said that the plaintiff company could not take advantage of its brokers' fraud; but there was no evidence that the company obtained the contracts or any kind of advantage by it.

The appeal should be allowed, and judgment should be entered for the plaintiff company with damages in such amount as the parties may agree upon, or, if unable to agree, as the proper local officer may on inquiry find that the plaintiff company has sustained by reason of the defendant's breach of his agreement to buy the 23,000 cases of "canned goods" in question, with costs of the action and of this appeal.

The other members of the Court agreed in the result; written reasons were given by LENNOX and MASTEN, JJ., respectively.

*Appeal allowed.*