

claim against the company was in question. The claimant was appointed managing director for one year from July 1, 1915, at a salary of £5 per week and a commission of £5 per cent. on all sales of the company's goods. By the agreement the claimant was, on applying to the company, entitled to an option to purchase one-third of the share capital of the company, and, when he acquired such shares, it was provided that his commission should cease but his employment should continue for ten years from July 1, 1915, at £5 per week. He was not to part with the shares without the written consent of the directors. On November 16, 1915, a compulsory winding-up order was made before the claimant had exercised his option. On December 3, 1915, he was employed by one of the directors, who carried on a similar business to that of the company, at £5 a week without commission and subject to a week's notice. In January, 1916, he sent in proof as a creditor of the company, claiming—

- (a) Arrears of salary and commission up to the winding-up.
- (b) Damages for loss of salary from the winding-up to 30 June, 1916.
- (c) Damages for loss of commission during the same period.
- (d) Damages for loss of option to take up shares, and of right to ten years' appointment.

The liquidator allowed the claim (a) and (b) up to the date the claimant obtained his new appointment, but rejected the rest of the claim.

On the hearing the claimant admitted that his present appointment, though precarious, would probably continue up to 30 June, 1916 but contended that damages ought to be assessed as at the date of the breach of contract, having regard to the probability of his obtaining full employment for the term. Astbury, J., held that in the circumstances, the claimant had not proved any damages under head (b) beyond what the liquidator had allowed. He also held that the claim of loss of commission under head (c) and for loss of option under (d) were not maintainable, and that as to (d) there was an implied condition that the option should be exercised while the company was in active existence, and this condition precedent not having been complied with, the claimant had no ground of claim under that head. The Court of Appeal (Lord Cozens-Hardy, M.R., Pickford and Warrington, L.JJ.) agreed with Astbury, J., in disallowing the claims under head (c), and the other grounds of claim do not appear to have been considered in appeal.