

SECOND DIVISIONAL COURT.

APRIL 14TH, 1916.

*STONE POINT CANNING CO. v. BARRY.

Principal and Agent—Purchase of Goods—Contract Made by Supposed Agent of Defendant—Authority of Agent—Ratification—Holding out—Estoppel—Secret Commission—Fraud—Breach of Contract—Damages.

Appeal by the plaintiff company from the judgment of MIDDLETON, J., 8 O.W.N. 411.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

I. F. Hellmuth, K.C., and J. G. Kerr, for the appellant company.

R. McKay, K.C., for the defendant.

MEREDITH, C.J.C.P., read a judgment in which he reviewed the evidence at length, and said that there was sufficient evidence adduced at the trial to put upon the defendant the onus of proof that the goods in question were not part of the 94,000 cases regarding which the defendant admitted liability; the knowledge and the proofs upon that question were altogether with him; and, the proofs not having been given, it should be held that they were part of the 94,000 cans—not upon the ground of ratification, but of the previous general and undefined authority given to Derocher. Upon the whole evidence, the purchases in question were purchases within the authority of Derocher, acting for and in the name of the defendant carrying on business in the name of John Barry & Sons; and, if that was not so, the defendant was plainly estopped from denying that the contracts were his.

It is not the law that, if a purchaser's agent receives a commission from one who is not his employer, the transaction in which the commission was received cannot stand; it is fraud only that has that effect; the payment of a commission is nothing more than evidence of fraud. The existing rule is, that, where a person in the employment of another is bribed with a view to inducing him to act otherwise than faithfully to his employer, the agreement is a corrupt one and unenforceable at law, whatever the effect produced on the mind of the person bribed might be: *Harrington v. Victoria Graving Dock Co.* (1878); 3 Q.B.D. 549. The right to set aside a transaction, on such a ground of fraud, should not

*This case and all others so marked to be reported in the Ontario Law Reports.