

their purchases ran to about 4,500,000 lbs. In view of these purchases and what was supposed to be a short crop, the prices were abnormally large.

Deacon was employed by the Dominion Tobacco Company as its agent, by agreement of the 10th June, 1919. He was to be paid a commission of  $\frac{1}{2}$  a cent per lb. upon his purchases. He was to purchase such amounts and kinds as he might be instructed to purchase, and he undertook not to act as buyer for any other concern except the Foster Tobacco Company. He advertised his appointment as agent in local and trade newspapers. On the 8th August he was told that the requirements of the Dominion company would be 300,000 to 350,000 lbs. of Burley tobacco. On the 24th October his right to purchase Burley was limited to 300,000 lbs.

Jasperson, the purchasing agent for the MacDonald company, was in daily touch with the company during the purchasing season, and received instructions from time to time as to the amount to be purchased.

Deacon said that he was instructed by Jasperson to purchase for him a large quantity of tobacco, and that he was instructed to purchase this tobacco in the names of the Dominion Tobacco Company and the Foster Tobacco Company, and that he reported purchases made from day to day during the buying season, and that these were all approved of by Jasperson. This was denied absolutely by Jasperson.

In fact, Deacon had purchased in the names of these two companies tobacco amounting to 1,100,000 lbs. The contracts were taken in the names of the Dominion and Foster companies, and he sorted them out and handed over to the Dominion company contracts amounting to 300,000 lbs. as being the tobacco purchased by him for that company, and that company accepted these contracts and took delivery under them. The contracts representing the remaining 800,000 lbs. he proffered to Jasperson, but Jasperson would have nothing to do with them. These contracts were at the buying price of 40 to 45 cents per lb., and upon the repudiation of the contracts the tobacco, where it had been sold at all, had realised only 13 cents, so that there was a net loss to be faced of approximately \$250,000. After Jasperson had refused to take over the contracts, Deacon went to Montreal, and saw Mr. Stewart of the MacDonald company. There was a conflict of evidence as to what Deacon then said and as to the position he took.

The learned Judge gives credit to Deacon as against both Jasperson and Stewart.

During the course of the trial, the plaintiffs and the Dominion company and Deacon united in attacking both Jasperson and the