

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

JUNE 15TH, 1914.

WHITE v. NATIONAL COATED PAPER CO.

6 O. W. N. 521.

Principal and Agent — Contract for Payment of Commissions — “Accepted Orders” — Commission Earned when Orders Accepted—Agent not Responsible for Subsequent Default—Judgment for plaintiff.

MIDDLETON, J., 26 O. W. R. 69; 5 O. W. N. 83, *held*, that where a contract provided that an agent was to receive a commission on all accepted orders, the commission was earned when the order was accepted, even though it was never carried out thereafter.

Austin v. Canadian Fire Engine, 4 E. L. R. 277, disapproved.

That a clause in the contract rendering the agent responsible “failing the customer paying the account” referred to a default in payment and not in ordering goods.

SUP. CT. ONT. (2nd App. Div. reversed above judgment. *Held*, in an agreement for a selling agency the words, “We shall pay you a commission . . . on all accepted orders,” meant, not “contracts” simply, but definite orders for particular goods; and that where contracts for sale were made, not followed up by “accepted orders,” no commission could be recovered.

Hart v. Standard Marine Ins. Co. (1889), 22 Q. B. D. 501, followed as to interpretation of words capable of two interpretations:

Hastings v. North Eastern, [1900] A. C. 260, as to meaning of word “order” in a commercial sense, followed.

Lockwood v. Levick (1860), 8 C. B. N. S. 603, distinguished.

Appeal by the defendants from a judgment of HON. MR. JUSTICE MIDDLETON, 26 O. W. R. 69.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J. EX., HON. MR. JUSTICE HODGINS, HON. MR. JUSTICE RIDDELL and HON. MR. JUSTICE LEITCH.

C. A. Masten, K.C., for defendants, appellants.

H. Cassels, K.C., for plaintiff, respondent.

THEIR LORDSHIPS’ judgment was delivered by

HON. MR. JUSTICE HODGINS:—The liability if any, for the commission, sued for under the contract, arises under two letters exchanged between the parties and dated 15th and 19th January, 1912, under which the respondent accepted the selling agency of the appellants’ goods for Ontario (except Ottawa).