

out being interfered with by his individual creditors, and was composed of members of his family, while he was made its manager, with the most ample powers, at a salary of \$2,400 a year, while all his earning and profits were to belong to the company.

The Dominion Brewery was owned in England, and one Foster came to Toronto, as the agent of the owners, to endeavour to effect a sale of it. He retained the late Mr. Barwick as his solicitor, and they put it in the hands of Case as agent to find a purchaser. An agreement was come to by which G. A. Case Limited, as trustee for certain persons, was to become the purchaser, but they were not able to put up the necessary money. Case then tried to induce William Mackenzie to buy, and about the same time a syndicate was formed composed of the plaintiffs, C. Millar, and G. A. Case Limited, to purchase the brewery on the terms of the previous agreement with G. A. Case Limited as trustee. A memorandum was drawn up shewing what each member of the syndicate was to contribute to the purchase, and how the stock of the company to be formed to take over the property was to be divided. George A. Case was not a party to the agreement, and did not sign it except as manager of G. A. Case Limited, but it provided that he was to be paid \$12,500 as a commission for purchasing the property, subject to be reduced in case the bankers' charges exceeded a certain sum.

The morning after this agreement was come to, it was learned that William Mackenzie had decided to purchase the property, and a sale was made by Foster to the defendant Lovell, who was trustee for Mackenzie. Various attempts were made to acquire an interest in the purchase for members of the syndicate, but eventually these resulted in nothing, and the present action was instituted by two members of the syndicate, to set aside the sale to Lovell, and, in the alternative, to recover damages against George A. Case and G. A. Case Limited for breach of their duty in aiding and procuring the sale to the trustee for Mackenzie.

The other issues were disposed off; and finally there remained only the alternative claims against George A. Case and G. A. Case Limited, which were disposed of by the trial Judge as above stated.

I am of the opinion that the Divisional Court arrived at the right conclusion concerning the plaintiffs' claim against G. A. Case Limited, which is the only matter we are now considering. The company, if liable to the plaintiffs at all, must be so under the agreement of the 18th December, 1905, forming