

CONFEDERATION LIFE ASSOCIATION } <sup>1927</sup> APPELLANT; \*May 9, 10.  
(DEFENDANT) ..... } \*May 31.

AND

J. T. BERRY (PLAINTIFF) .....RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME  
COURT OF ALBERTA

*Agency—Insurance—Agency agreement—Construction—Right to discharge agent—Commission on renewal premiums paid after discharge.*

The judgment of the Appellate Division of the Supreme Court of Alberta, 22 Alta. L.R. 360, was reversed, the Court holding, on construction of the agreement in question, that the defendant insurance company had the right to terminate, as it did, the plaintiff's agency under the agreement, and that the plaintiff was not entitled to commission on renewal premiums paid after such termination.

APPEAL by the defendant from the judgment of the Appellate Division of the Supreme Court of Alberta (2) which, by a majority, allowed the plaintiff's appeal from the judgment of Boyle J., and ordered a new trial.

Among other claims between the parties were claims by the plaintiff for damages for wrongful dismissal and for other breaches of contract, and a claim for commissions in

\*PRESENT:—Anglin C.J.C. and Mignault, Newcombe, Rinfret and Lamont JJ.

(1) (1899) 29 Can. S.C.R. 613. (2) 22 Alta. L.R. 360 1 [1926] 3 W.W.R. 670.

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respect of renewal insurance premiums. Boyle J., who withdrew the case from the jury, held against the plaintiff on the said specified claims.

By agreement dated 1st October, 1922, the plaintiff agreed to act as the defendant's district manager during the continuance of the agreement, and the defendant agreed "that while the [plaintiff] is acting for the [defendant] as such agent as aforesaid, and complying with the terms and conditions herein, on his part, which said terms and conditions are hereby made a condition precedent, he will be paid the following remuneration for his services." Then followed the provisions for commissions to be paid, including an item "Renewals participating 5 per cent.; Renewals, non-participating 2½ per cent." The agreement contained the following clause: "This agreement may be terminated at any time by [the defendant] giving [the plaintiff] notice in writing, terminating same, and [the plaintiff] agrees with [the defendant] forthwith, after receiving said notice, to render an account of and pay [the defendant] all moneys, and deliver up all notes, securities, papers and supplies held by him \* \* \*."

By letter dated 14th June, 1924, written from Toronto, Ontario, by the defendant's general manager of agencies to the plaintiff at Red Deer, Alberta, the defendant notified the plaintiff of termination of the agreement.

Boyle J. held that, under the terms of the agreement, the defendant was at liberty to terminate the agreement without giving any reasons; that the plaintiff was entitled to credit for all commissions, renewal commissions and bonus on all insurance premiums falling due and paid by either cash or note to and including the 14th June, 1924, but refused to hold that the plaintiff was entitled to commissions on renewal premiums paid after that date.

In the Appellate Division (1) the majority of the Court (Harvey C.J., Beck and Mitchell JJA.) held that, in construing the agreement, the words "while the [plaintiff] is acting for the [defendant] as such agent" should not be taken as attached to the word "paid," but to the word "services," the sense thus being that the plaintiff was to be paid for his services performed while he was agent; hence, if there were no services which the agent was bound

to perform with regard to the renewal of insurance policies, his services in procuring the insurance originally were the services which entitled him to the agreed commission on the renewal premiums, and, in such case, it was a reasonable construction to say that the meaning was that the agent would be entitled to commission on renewal premiums when paid and so long as they continued to be paid; that, in this regard, there were questions of fact which the plaintiff was entitled to have submitted to the jury, and there should be a new trial. Hyndman and Clarke JJA., dissenting, held, on construction of the agreement, that the plaintiff was not entitled to commission on renewal premiums payable after the termination of his agency, but, making allowance for time for the letter terminating the agency to reach the plaintiff, they would fix the 20th June, rather than the 14th June, 1924, as the date of termination of the agency.

From the judgment of the Appellate Division the defendant appealed to the Supreme Court of Canada.

*W. N. Tilley K.C.* for the appellant.

*E. Lafleur K.C.* and *W. E. Payne K.C.* for the respondent.

The judgment of the court was delivered by

ANGLIN C.J.C.—The plaintiff's rights are governed by the terms of his contract of employment and we are, with respect, unable to find in those terms anything uncertain or equivocal. Termination of the contract at any time by notice is expressly made optional with the Association. Whether there existed good ground for the termination is quite irrelevant. On such notice being duly given, the plaintiff's services forthwith came to an end. He was thereupon made accountable to the Association for all "monies, documents," etc., in his hands relating to its business and he thereafter ceased to act for the Association.

His right to recover "remuneration for his services," i.e., commissions on new insurance and renewal premiums, is likewise expressly restricted by the words,

while he is acting for the said Association as such Agent as aforesaid, and complying with the terms and conditions herein, on his part, which said terms and conditions are hereby made a condition precedent.

There is nothing ambiguous in this contract. Its plain terms must be given effect to regardless of any consideration of harshness or unfairness or of supposed intentions of

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the parties other than those expressed therein. With the learned trial judge (Boyle, J.) and Hyndman and Clarke, J.J.A., we are of the opinion that the plaintiff is entitled to commissions only in respect of premiums paid, whether in cash or notes, prior to his discharge. We would, however, for the reasons indicated by Clarke, J.A., fix the date of discharge at the 20th of June, 1924, rather than the 14th of June, 1924.

For these reasons the appeal should be allowed with costs here and in the Appellate Division and, with the slight modification suggested, the judgment of the learned trial judge should be restored.

*Appeal allowed with costs.*

Solicitors for the appellant: *Carson & Carson.*

Solicitors for the respondent: *Payne & Graham.*

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