

## DOMINION LINEN MFG. CO. v. LANGLEY.

1911

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

\*Nov. 17.  
\*Dec. 22.

*Insolvent company—Sale of assets by liquidator—Sale “free from incumbrances”—Conversion—Breach of contract.*

APPEAL from a decision of the Court of Appeal for Ontario(1), reversing the judgment at the trial(2), in favour of the plaintiffs (appellants).

The defendant, Langley, is liquidator of the Dominion Linen Mills, Ltd., which by an order of the High Court of Justice in January, 1906, was declared to be insolvent and liable to be wound up. Some time before the making of this order the company had hypothecated its principal assets, including its stock of manufactured linens, to the Crown Bank of Canada to secure advances and the bank had taken possession. By order of court the business was allowed to be carried as a going concern by the liquidator and advances to be procured from the bank for wages, etc., to be repaid out of the first moneys coming into his hands. While so carrying it on he advertised for tenders for purchase of the assets, and, in April, 1906, an agreement was entered into between the defendant and one Todd by which the latter became purchaser of the property of the company “free from incumbrances” and transferred the same shortly after to the plaintiffs, a new company formed to take over the business. The defendant received \$5,800 on account

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\*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

(1) 19 Ont. W.R. 648.

(2) 14 Ont. W.R. 1163.

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of the purchase money and, by direction of the plaintiffs, and on their undertaking to hold him harmless, paid it over to the Crown Bank.

It appeared that the insolvent company used to send their goods to Scotland to be bleached, and a quantity was there when the winding-up order was made. The bleaching firm wrote to the defendant, stating the amount of their account in respect to their goods and asking for instructions. After some further correspondence the liquidator wrote them full information as to what had been done, and stated that the proceeds of sale of the assets would hardly pay the bank's claim. He ended his letter by saying: "I, as liquidator, have no objection to your disposing of the goods on the highest market, applying the proceeds of such sale on your claim and advising me accordingly." Under the law of Scotland the bleachers had no right to sell the goods to satisfy their lien without complying with certain formalities, which they did not do.

The plaintiffs brought action against the liquidator claiming damages for conversion of the goods so sold and, at the trial, were allowed to amend by adding a claim for breach of the contract to sell the assets of the insolvent company "free from incumbrances." At the trial they recovered judgment on the latter ground, which the Court of Appeal reversed, holding that there was no conversion, as the defendant's letter quoted above did not amount to instructions to sell, and that there was no breach of contract, as the term "free from incumbrances," as used in the contract with Todd, was not intended to apply to the charges for bleaching, but to the mortgage on the buildings and liens on the stock.

The plaintiffs appealed to the Supreme Court of Canada, which, after hearing counsel for the respective parties, reserved judgment, and on a subsequent day dismissed the appeal.

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*Appeal dismissed with costs.*

*J. W. Bain K.C.* and *M. L. Gordon* for the appellants.

*Anglin K.C.* for the respondent.

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