CONTAINER MATERIALS, LIMITED, AND OTHERS ..... APPELLANTS;

AND

HIS MAJESTY THE KING ..... RESPONDENT.

1941
* Dec. 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17.

1942
* Feb. 3.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law—Agreement or arrangement "to unduly prevent or lessen competition"—Cr. Code, s. 498 (1) (d)—What must be shown to establish the offence—"Unduly"—Intent—Evidence—Admissibility of written opinions of counsel given before the making of proposed agreements.

This Court dismissed appeals from the affirmance, by the Court of Appeal for Ontario (Henderson J.A. dissenting on certain questions of law) ([1941] 3 D.L.R. 145), of appellants' convictions on the charge, laid under s. 498 (1) (*d*) of the *Criminal Code*, that they did unlawfully conspire, combine, agree or arrange together and with one another, and with ten other named companies or individuals not indicted, to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply in certain named places and other places throughout Canada, of corrugated and solid fibreboard boxes or shipping containers.

Per the Chief Justice: S. 498 (1) (*d*) is aimed at protecting the specific public interest in free competition (*Stinson-Reeb* v. *The King*, [1929] S.C.R. 276; *Weidman* v. *Shragge*, 46 Can. S.C.R. 1). The lessening or prevention agreed upon will be "undue" within the meaning of the enactment if, when carried into effect, it will prejudice the public interest in free competition to a degree that the tribunal of fact finds to be undue, and an agreement to prevent or lessen competition to such an extent is, accordingly, an offence under the enactment. In the present case, the aim of the parties to the agreement was to secure effective control of the market in Canada; and this fact affords in point of law a sufficient basis for a finding that the agreement was one which, if carried into effect, would gravely prejudice the public interest in free competition, and for a conviction under s. 498 (1) (*d*).

* PRESENT:—Duff C.J. and Rinfret, Kerwin, Hudson and Taschereau JJ.

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Per Rinfret, Kerwin, Hudson and Taschereau JJ.: If it is shown that the accused entered into an agreement or arrangement, the effect of which would be unduly to prevent or lessen competition, it need not also be shown, in order to establish an offence under said enactment, that the agreement or arrangement must have been intended by the accused to have that effect. *Mens rea* is necessary, but that requirement was met when it was shown that appellants intended to enter and did enter into the very arrangement found to exist. As to the word "unduly" in the requirement to constitute the offence: The public is entitled to the benefit of free competition (except in so far as it may be interfered with by valid legislation), and any party to an arrangement, the direct object of which is to impose improper, inordinate, excessive or oppressive restrictions upon that competition, is guilty of an offence (*Stinson-Reeb* v. *The King*, [1929] S.C.R. 276). Once an agreement is arrived at, whether anything be done to carry it out or not, the matter must be looked at in each case as a question of fact to be determined by the tribunal of fact upon a common sense view as to the direct object of the arrangement complained of. The evidence in these cases of what was done is merely better evidence of that object than would exist where no act in furtherance of the common design had been committed.

Per curiam: Letters giving opinions of counsel to appellants or some of them prior to the execution of original agreements in question, which opinions, it was suggested, would indicate that the matter was placed before counsel who advised that, on the information before them, it would not be contrary to law for appellants, or some of them, to enter into the agreements, were properly rejected as evidence at the trial, because, even if the letters contained what was suggested, they could have no bearing upon the point of substance to be determined.

APPEALS from the judgment of the Court of Appeal for Ontario (1) in so far as it affirmed (Henderson J.A. dissenting on certain questions of law) the conviction of the appellants by Hope J. (2), sitting without a jury, under the count of an indictment which charged that they did unlawfully conspire, combine, agree or arrange together and with one another, and with ten other named companies or individuals not indicted, to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply in certain named places, and other places throughout Canada where the articles or commodities hereinafter mentioned are offered for sale, of articles or commodities which may be the subject of trade or commerce, to wit, corrugated and solid fibreboard boxes or shipping containers, and did thereby commit an indictable offence contrary to the provisions of the *Criminal Code*, s. 498, subs. 1 (*d*).

(1) [1941] 3 D.L.R. 145. (2) [1940] 4 D.L.R. 293.

A. G. Slaght, K.C., and *H. E. Manning, K.C.*, for Container Materials, Ltd., and Badden (appellants).

L. Forsythe, K.C., for Shipping Containers, Ltd., and Standard Paper Box, Ltd. (appellants).

A. G. Slaght, K.C., for Martin-Hewitt Containers, Ltd., Canadian Wirebound Boxes, Ltd., The Corrugated Paper Box Co. Ltd., Gair Company, Canada, Ltd., Hinde and Dauch Paper Company of Canada, Ltd., Hygrade Corrugated Products, Ltd., Hilton Brothers, Ltd., Martin Paper Products, Ltd., Canadian Boxes, Ltd., Maritime Paper Products, Ltd., and G. W. Hendershot Corrugated Paper Co., Ltd. (appellants).

H. E. Manning, K.C., for Dominion Corrugated Paper Co., Ltd., Kraft Containers, Ltd., and Acme Paper Box Co., Ltd. (appellants).

F. W. Wegenast, K.C., for Superior Box Co., Ltd. (appellant).

J. C. McRuer, K.C., and *R. M. Fowler* (*J. L. McLennan* also present), for respondent.

THE CHIEF JUSTICE—The facts of the case have been fully discussed in the eleborate judgments at the trial and in the Court of Appeal in those of the Chief Justice of Ontario and Mr. Justice Masten and need not be restated.

The learned Chief Justice of Ontario, in the course of his judgment, says:—

> In my opinion it is established by evidence properly admissible, that an agreement or arrangement was made among the manufacturers who mainly supplied the market throughout Canada for corrugated and solid fibreboard boxes and shipping containers that they would place the control of the marketing, the barter, sale and supply to customers of their output of these products under the control of Container Materials Limited, a company that they themselves, through their representatives on the board of directors, controlled and operated, with the appellant Badden as president and secretary and virtual manager, and that the measure and extent of that control was such control as would be in the hands of a single purchaser, to whom alone any of these manufacturers was at liberty to sell its products, or any part of them, and for whom the manufacturers themselves in supplying their real customers were mere agents selling the goods of that purchaser for it and under its strict supervision and control. While this was not strictly a monopoly it was to have all the effect of one so far as the public was concerned.

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If I am right in the conclusion I have reached as to the real arrangement or scheme of these manufacturers, and of those who worked with them in its execution, then I think there can be no question that it falls within the terms of sec. 498, ss. 1 (*d*). Its purpose was to extinguish so far as these manufacturers were concerned all competition in the barter and sale of these products in Canada just as completely as if Container Materials Limited had a monopoly of them.

Mr. Justice Middleton, after referring to the judgments of this Court in *Weidman* v. *Shragge* (1), and in *Stinson-Reeb* v. *The King* (2), thus expressed his conclusion:

Unquestionably these cases establish that the agreements here referred to by the learned trial Judge are a violation of clause (*d*) of section 498 and therefore the conviction ought to affirmed.

Mr. Justice Masten says:—

The organization at the time of its creation and during the period from 1931 to 1939 appears to have included, with certain minor exceptions, substantially all the Canadian manufacturers of corrugated and solid fibre board boxes or shipping containers. The allegations of the Crown as set forth in the particulars delivered by them are as follows:

"At the time of the incorporation of Container Materials Limited, the aforementioned corporations, together with Kitchener Paper Box Company, were all the producers in Canada of corrugated paper boxes and with the exception of Building Products Limited were all the manufacturers of fibre board boxes.

"At the date of the indictment the accused manufacturing corporations, together with Pacific Mills Limited, were the only producers of corrugated and fibre board shipping containers in Canada, with the exception of one other company with a small production.

"Building Products Limited, a corporation mentioned in the indictment was, up to the year 1935, engaged in the manufacture of shipping containers at which time it ceased to manufacture the same under circumstances which will be referred to in greater detail hereafter.

"Pacific Mills Limited was since 1933, and now is, engaged in the manufacture of shipping containers."

The finding of the trial Judge is "that Container Materials Limited represented that it controlled 100% of the industry". I think it is established that the organization operating through Container Materials Limited substantially controlled throughout Canada during the period in question the manufacture and sale of containers.

It is clear from the foregoing analysis of the organization created in 1931 that it was an instrument possessing enormous potency, whose first object was to improve or increase the profits of its members and adherents by its control of the manufacture and sale throughout Canada of containers. It is also manifest from the foregoing analysis that the supervision and restrictions imposed by the organization necessarily lessened competition. Whether the charter and by-laws of Container Materials Limited, coupled with the four agreements when taken by themselves, make manifest an agreement to lessen competition *unduly* need not be considered, for the organization manifests a common agreement

(1) (1912) 46 Can. S.C.R. 1. (2) [1929] S.C.R. 276.

and certain subsequent overt acts done by the organization in pursuance of the common agreement establish in my opinion that its objective was to "unduly lessen competition" and hence was unlawful.

Mr. Justice Fisher agreed with the conclusion and reasons of the Chief Justice.

I think it right to say that, after fully weighing the arguments presented, I am in agreement with these conclusions of the learned Chief Justice and Justices of the Court of Appeal in respect of fact as well as in respect of law. It follows necessarily, of course, that the appellants must fail in their contention that there was no evidence to support the conviction pronounced by the learned trial Judge under clause (*d*) of section 498.

This, however, is by no means the end of the matter, because it was argued with great ability and force by counsel for the appellants that, assuming the conclusions of fact of the learned trial Judge and of the majority of the Court of Appeal to be well-founded, this is not sufficient to sustain the conviction, since, the appellants contend, both the learned trial Judge and the learned Justices of the Court of Appeal misconstrued and misapplied the section of the Code upon which the indictment is based, which is in these terms:—

Lessen competition.

498. (*d*) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

Two main points are raised. First, it is not sufficient, it is argued, to establish an agreement to prevent or lessen competition in such a manner, or to such an extent, that the tribunal considers to be undue in fact. It is, it is argued, an essential element of the offence, which, of course, must be proved, that the intention present in the minds of the accused persons in entering into their agreement is to do what they conceive will have the effect and which they intend to have the effect of unduly preventing or lessening competition, within the meaning of the statute.

The second point arises from the contention of the appellants that the essence of the offence is an agreement to do something injurious to the public; that such injury to the public must appear from the evidence and must be found as a fact in order to establish a legal basis for a conviction.

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These contentions were advanced in the Court of Appeal, as well as in this Court. They constitute the most important grounds of appeal.

The enactment before us, I have no doubt, was passed for the protection of the specific public interest in free competition. That, in effect, I think, is the view expressed in *Weidman* v. *Shragge* (1) in the judgments of the learned Chief Justice, of Mr. Justice Idington and Mr. Justice Anglin, as well as by myself. This protection is afforded by stamping with illegality agreements which, when carried into effect, prevent or lessen competition unduly and making such agreements punishable offences; and, as the enactment is aimed at protecting the public interest in free competition, it is from that point of view that the question must be considered whether or not the prevention or lessening agreed upon will be undue. Speaking broadly, the legislation is not aimed at protecting one party to the agreement against stipulations which may be oppressive and unfair as between him and the others; it is aimed at protecting the public interest in free competition. That is only another way of putting what was laid down in *Stinson-Reeb* v. *The King* (2) which, it may be added, was intended to be in conformity with the decision in *Weidman* v. *Shragge* (1), as indicated in the passages quoted in the judgment.

The lessening or prevention agreed upon will, in my opinion, be undue, within the meaning of the statute, if, when carried into effect, it will prejudice the public interest in free competition to a degree that the tribunal of fact finds to be undue, and an agreement to prevent or lessen competition to such an extent is, accordingly, an offence against sec. 498 (*d*).

The learned trial Judge, as well as the learned Justices of the Court of Appeal, directed their attention to the effect of the agreement from this point of view. The learned trial Judge observed that the agreement was " to put free competition into a straight jacket ". Mr. Justice Masten said " free competition was stifled ". The learned Chief Justice of Ontario says that " the purpose of the agreement was to extinguish so far as these manufacturers were concerned all competition in the barter and sale of these products in Canada just as completely as if Container Materials Limited had a monopoly of them ".

(1) (1912) 46 Can. S.C.R. 1. (2) [1929] S.C.R. 276.

The majority of the Court of Appeal rightly held, I think, that the aim of the parties to this agreement was to secure effective control of the market in Canada; it may be added that in this they were very largely successful. But the fact that such was the agreement affords in point of law a sufficient basis for a finding that the agreement was one which, if carried into effect, would gravely prejudice the public interest in free competition, and a conviction under section 498 (*d*).

With respect to the other points raised by the appellants, it is sufficient to say that I have had an opportunity of reading the judgment of my brother Kerwin and I fully concur with him as regards those points.

The appeal should be dismissed.

The judgment of Rinfret, Kerwin, Hudson and Taschereau, JJ. was delivered by

KERWIN J.—The appellants, together with Wilson Boxes Limited, were convicted by Hope J. upon each of four counts in an indictment, count 1 being laid under clause (*d*) of subsection 1 of section 498 of the *Criminal Code,* and counts 2, 3 and 4 under clauses (*b*), (*a*) and (*c*) respectively. The convictions against all the accused on counts 2, 3 and 4 were quashed by the Court of Appeal; the conviction against Wilson Boxes Limited under count 1 was set aside and a new trial directed; the convictions of the appellants under count 1 were affirmed, and the sentences imposed by the trial Judge were affirmed and imposed with respect to the conviction of each of the appellants under that count. These appeals are from the affirmance of such convictions and are based on questions of law on which Henderson J. A. dissented in the Court of Appeal. Our jurisdiction is limited to those questions of law and imposes upon this Court a task different from that which confronted the Court of Appeal.

Subsection 1 of section 498 of the Code provides:—

> Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding ten thousand dollars, and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company,
>
> (*a*) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or

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(b) to restrain or injure trade or commerce in relation to any such article or commodity; or

(c) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or

(d) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property.

By count 1 of the indictment, the accused were charged that they did unlawfully conspire, combine, agree or arrange together and with one another and with ten other named companies or individuals not indicted, to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply, in certain named places and other places throughout Canada, of corrugated and solid fibreboard boxes or shipping containers.

The circumstances preceding the incorporation and organization of Container Materials Limited and the facts in connection with the operation of that company as affecting the appellants, are set forth in the reasons for judgment of the Chief Justice of Ontario. Having considered the record in connection with the arguments presented on behalf of the appellants, I find myself in agreement with the Chief Justice's statement of facts. Any slight inaccuracy does not in the least affect the matters to be determined by this Court. These matters depend upon the questions of law upon which Henderson, J. A., dissented, and counsel for the appellants have conveniently allocated what they contend are those questions under six different headings as follows:—

Firstly:

That the learned trial judge erred in accepting the view of the Crown that the intentions and objects of the accused were beside the question; and

That *mens rea* or guilty mind is a necessary ingredient of the crime here charged and the crime of conspiracy is particularly one which involves *mens rea.*

Secondly:

The improper rejection of evidence.

Thirdly:

The accused were prejudiced in their defence by the manner in which the Crown dealt with the documentary records of the accused; and

That the conviction and sentence both fail and that in order to convict the accused on appeal the Appellate Court would have to substitute a conviction by such Court and a sentence by such Court, which is beyond its province.

Fourthly:

The improper admission of evidence.

Fifthly:

That it is not sufficient for the Crown to make out a *prima facie* case and it is not sufficient that the Crown give in evidence circumstances capable of two interpretations, one consistent with innocence and the other with guilt; much less is the Court asked to find guilt from circumstances at least equally consistent with innocence.

Sixthly:

There is no evidence to support any conviction; and

A conviction under section 498, subsection (*d*), cannot stand in view of an acquittal under subsection (*b*); and

That the accused were charged with one conspiracy only and that the gist of the offence is conspiracy and that the various counts set forth in the indictment were simply allegations of overt acts in pursuing the objects of the conspiracy and therefore the conviction cannot be upheld.

I turn first to those identified as secondly, thirdly and fourthly. I agree with what the learned Chief Justice has said as to the manner in which the documents seized in the possession of various of the appellants were subsequently dealt with. I approve of every word that he has said with reference to this matter but I also agree with his statement "that a case was made against each of the appellants without the assistance of any documents or books the admissibility of which was properly objected to". In the great majority, if not all, of the cases to which our attention was called, where an original letter was found in the possession of one of the accused a copy of that letter was

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found in the possession of another, from whom the original purported to have come. There was evidence before the Court sufficient to show that the accused were engaged in accomplishing the same common object, and evidence of one conspirator was therefore evidence against the other. The distinction between entries made by a fellow conspirator, contained in various documents actually used for carrying out the design, and a document not created in the course of carrying it out but made by one of the conspirators after the illegal object was completed, is shown in *The Queen* v. *Blake* (1), referred to in *Mirza Akbar* v. *King-Emperor* (2). The appellants were not tried before a judge and jury but by a judge alone, who has given his reasons for the conviction on count 1 and, even if any of the evidence that was admitted before him falls within the second category, it is quite apparent from those reasons that it had no effect upon the reasons or the result. It has not been overlooked that the trial judge stated:—

> It might also be noted that according to The Companies Act, cap. 251, R.S.O. 1937, sec. 106, minute books which are required to be kept by the company shall be *prima facie* evidence of all facts purporting to be therein stated in any action or proceeding against the corporation.

This provision of the Ontario *Companies Act* could, of course, have no application to a prosecution under the Code, and the trial Judge did not so treat it. He had already determined that the books were otherwise admissible and merely added a reference to the Ontario statute.

The appellants complain that the opinions of counsel, rendered to the appellants or some of them prior to the execution of the original agreements, were wrongfully rejected. What these opinions are, we do not know, but it is suggested that they would indicate that the matter was placed before counsel who advised that, on the information before them, it would not be contrary to law for the appellants, or some of them, to enter into the agreements. In my opinion, the evidence was properly rejected because, even if the letters contained what has been suggested, they could have no bearing upon the point of substance to be determined. The only other bit of evidence rejected by the trial judge that was specifically referred to is a letter which, according to a statement of counsel appearing in the record, was addressed, by Wilson Boxes

(1) (1844) 6 Q.B. 126. (2) [1940] 3 All E.R. 585.

Limited, to Messrs. Hardy and Badden and dated January 27th, 1939. This is the letter referred to by Chief Justice Robertson and because of its non-admission a new trial was directed so far as the conviction of Wilson Boxes Limited on count 1 was concerned. It is pointed out that the Chief Justice was in error in stating that this letter was tendered in evidence by counsel for Wilson Boxes Limited, and apparently this is so. Wilson Boxes Limited was not represented at the trial. It was counsel for Superior Box Company, Limited, who tendered the letter in evidence. No doubt the confusion arose because the same counsel appeared before the Court of Appeal not only for Superior Box Company, Limited, but also for Wilson Boxes Limited. We are not concerned with the position of the latter company but it was argued that this letter should have been admitted in favour of Superior Box Limited. I am unable to see how a letter from Wilson Boxes Limited to Hardy and Badden could be evidence on behalf of Superior Box Limited.

Having gone over the record carefully to see what transpired at the trial with reference to the seized bundles, I am satisfied that the appellants were not prejudiced in their defence by the manner in which the Crown dealt with the documentary evidence of the accused. Every facility was offered by Crown counsel and was refused by counsel for the appellants, or at least by some.

The second, third and fourth points argued by the appellants being disposed of, the first, fifth and sixth may be taken together. The ground may first be cleared by dealing with the objection that the accused were not all those engaged in the manufacture of corrugated and solid fibreboard boxes or shipping containers. It was pointed out that the count in the indictment alleged that the accused conspired together and with one another and with ten other named companies or individuals not indicted, to unduly prevent or lessen competition. While counsel for the Crown referred to certain documents as indicating that the accused were all the manufacturers of the articles mentioned, a perusal of these documents does not satisfy me that that contention is correct, but I am satisfied from the evidence that the accused represented the great bulk of the industry. That was the conclusion of the trial judge and of the Chief Justice of Ontario, and any difference of

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opinion on that score, in the Court of Appeal, would be on a question of fact, as to which there is no appeal to this Court. The objection that the convictions under clause (*d*) could not stand because of the acquittals under clause (*b*) is of no moment, as this Court is not concerned with anything except the question whether the convictions on the first count are proper.

It was argued that it was not sufficient for the Crown to show an agreement or arrangement, the effect of which would be unduly to prevent or lessen competition, but that the agreement or arrangement must have been intended by the accused to have that effect. This is not the meaning of the enactment upon which the count was based. *Mens rea* is undoubtedly necessary, but that requirement was met in these prosecutions when it was shown that the appellants intended to enter, and did enter, into the very arrangement found to exist. The offences mentioned in the statute in question in *Attorney General of Australia* v. *Adelaide Steamship Company* (1) were not complete without proof of the intent. As pointed out by Lord Parker at page 798, an amending Act provided that in any prosecution for an offence against certain sections of the main enactment,

> the averments of the prosecutor contained in the information, declaration, or claim shall be deemed to be proved in the absence of proof to the contrary, but so that the averment of intent shall not be deemed sufficient to prove such intent.

This decision can have no application to a prosecution under clause (*d*) of subsection 1 of section 498 of the Code.

The meaning of "unduly" in clause (*d*) of subsection 1 of section 498 of the Code was considered in the criminal case of *Stinson-Reeb Builders Supply Company* v. *The King* (2), where Mr. Justice Mignault, speaking for the Court, quoted the following passage from the judgment of the present Chief Justice of this Court in the civil case of *Weidman* v. *Shragge* (3):—

> I have no hesitation in holding that as a rule an agreement having for one of its direct and governing objects the establishment of a virtual monopoly in the trade in an important article of commerce throughout a considerable extent of territory by suppressing competition in that trade, comes under the ban of the enactment.

(1) [1913] A.C. 781. (2) [1929] S.C.R. 276.
(3) (1912) 46 Can. S.C.R. 1, at 37.

Mr. Justice Mignault also quoted the following passage from the judgment of Mr. Justice Anglin (as he then was), at page 42:—

> The prime question certainly must be, does it (the agreement alleged to be obnoxious to section 498), however advantageous or even necessary for the protection of the business interests of the parties, impose improper, inordinate, excessive or oppressive restrictions upon that competition the benefit of which is the right of every one?

Under the decision in the *Stinson-Reeb* case (1), the public is entitled to the benefit of free competition except in so far as it may be interfered with by valid legislation, and any party to an arrangement, the direct object of which is to impose improper, inordinate, excessive or oppressive restrictions upon that competition, is guilty of an offence. A comparison between section 498 of the Code and section 498A (which was enacted subsequent to the decision in the *Stinson-Reeb* case (1)) indicates that there has not been any change in the rule. Once an agreement is arrived at, whether anything be done to carry it out or not, the matter must be looked at in each case as a question of fact to be determined by the tribunal of fact upon a common sense view as to the direct object of the arrangement complained of. The evidence in these cases of what was done is merely better evidence of that object than would exist where no act in furtherance of the common design had been committed. So viewing the matter, there can be no question that, not only was there some evidence upon which the trial judge could convict, but the evidence was overwhelming that all the appellants at one time or another conspired, combined, agreed or arranged to prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of corrugated and solid fibre boxes or shipping containers, and that they conspired to do so unduly.

This applies as well to Superior Box Company Limited as to the other appellants. It is true that this Company, as well as several others, did not sign any agreement, but the correspondence between it and Container Materials Limited and other admissible evidence shows that it paid a portion of the expenses of Container Materials Limited; that it submitted to inspection; that its representatives were present at various meetings; that it contributed to the costs of the Acme contract; and that it had a knowledge of

(1) [1929] S.C.R. 276.

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and contributed to the cost of the Building Products purchase. Instead of the position of this appellant being, as put in its factum, " entirely consistent with an intention to make the best of conditions as we found them and over which we had no control ", the truth of the matter is that the Company became a member of the conspiracy and actually acted in conjunction with the others, although, on occasions, it sought to free itself from some of its fetters and succeeded in securing, from time to time, special advantages not enjoyed by the others.

The appeals should be dissmised.

Appeals dismissed.

Solicitors for the appellants other than Acme Paper Box Co., Ltd., and Superior Box Co., Ltd.: *Manning & Babcock.*

Solicitors for the appellant, Acme Paper Box Co., Ltd.: *Singer & Kert.*

Solicitors for the appellant, Superior Box Co., Ltd.: *Wegenast, Hyndman & Kemp.*

Solicitors for the respondent: *McRuer, Mason, Cameron & Brewin.*