

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of The
United Insurance Company v. Cotton from the
Supreme Court of South Australia; delivered
July 3rd, 1885.*

Present :

LORD WATSON.

SIR BARNES PEACOCK.

SIR ROBERT COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

The Respondent Cotton was appointed to act as agent for the Appellants, in the Colony of South Australia, by a power of attorney under the seal of the Company, dated 16th June 1880. He was thereby authorised to represent the Company in the Colony, and to accept, in their name, maritime risks on goods and other insurable interests, such risks beginning or ending in the Colony, and also risks on the hulls of vessels duly registered in the Colony. Instructions, bearing date the 23rd June 1880, were issued, by the directors and manager, giving him information as to the limit up to which he was to be at liberty to insure particular risks.

On the 30th March 1882 the Respondent took over a portion of an insurance effected by the Adelaide Marine and Fire Insurance Company upon a cargo of wheat to be shipped in the "Duke of Sutherland," from Timaru, in New Zealand, to the United Kingdom, or the Continent of Europe. The amount which he thus accepted, professedly as agent for the Company, was a sum not exceeding 1,000*l.* As the loading of the cargo was not yet completed, the precise amount of the insurance remained for after

adjustment; but it was not to exceed that sum. That insurance complied with the instructions in this respect that it was below the limit allowed in the case of grain vessels; but the Company object to the insurance and maintain that it is not binding upon them, upon the ground that it was effected by the Respondent outside of what is termed throughout these proceedings his jurisdiction. The risk was neither to commence nor to end in the Colony of South Australia. The Company through their London agent had to pay the policy. The agent paid in ignorance of the real state of matters, and this action was brought by the Company for recovery from Cotton of the sum of 821*l.* 10*s.*, which represents the amount of the insurance money as finally adjusted, with an additional sum paid for exchange.

It is not disputed that if the authority of Cotton rested upon the power of attorney, and relative instructions, he exceeded his powers as agent; but the pith of his defence is stated on the pleadings, in these words. "The Defendant asserts that, by their letters and their conduct the Plaintiffs, (that is the Appellant Company) induced him to believe that he was at liberty to take the risk on the said 'Duke of Sutherland,' and induced him to act on that belief; and that the Plaintiffs are thereby estopped from asserting in this action that the Defendant exceeded his authority."

The case went to trial before Mr. Justice Boucaut and a jury, and occupied their time upon the 8th, 10th, and 11th July 1884. At the conclusion of the trial the jury, after being charged by Mr. Justice Boucaut, returned a verdict for the Defendant, but the Judge refused to enter up judgement upon that verdict, because, at the time, he took the view that there was no evidence to sustain it, although, to save expense, in a possible event of the case, he permitted it

to go to the jury. The three questions which he put to the jury were these:—“ Did the Plaintiff Company by the course of dealing between them and the Defendant authorise him as their agent to accept the risk on the ‘ Duke of Sutherland ’? Secondly: Did the Plaintiffs by their conduct induce the Defendant to believe that he was authorised to accept the risk on the ‘ Duke of Sutherland ’? and, thirdly: Did the Defendant act on a belief so induced?” According to the argument addressed to the Court below, which found favour with the Judges of the Supreme Court, the two last of these questions are those upon which the present case really turns. No objection has been taken to the conduct of the Judge at the trial, and no objection has been taken to the reception of evidence. So that their Lordships must assume that the case was properly submitted to the jury, if there be evidence from which the jury were reasonably entitled to draw an inference of fact in favour of the Defendant.

Their Lordships entertain no doubt that there is evidence which was properly submitted to the jury; but it does not follow that the verdict of the jury upon the evidence must be sustained. The real question is whether that evidence is, as the Court below thought, such that the jury might reasonably find for the Defendant.

Their Lordships have heard a very able argument founded upon a great many minutiae in the evidence which has been read, and which is wholly documentary, so far as it appears to their Lordships to be of any importance. But the question between the parties appears to their Lordships to turn upon the effect of two or three documents at the most.

Shortly after the agency of Mr. Cotton commenced, a question arose as to the propriety of his insuring wool from the sheeps' back to the

vessel which was to convey it across the sea. There does not seem to have been any controversy as to this, or any doubt that insurances of that kind were entirely beyond his power; but the Company were induced to give him authority to make such insurances, on the representation made by him that it was necessary in their interest, in order to secure the business they were desirous to carry on. However, the fact that they authorised a new and distinct risk, not contemplated by the power, can really be of no consequence in the present case. No inference can be drawn to the effect that, because they enlarged his power in one direction, therefore they did so in another.

A more important feature of the case begins with the controversy as to the insurances upon the cargo of the "Invercauld." That was a vessel loading at Adelaide, and an agent in Melbourne, trespassing upon the jurisdiction of Mr. Cotton, effected an insurance over her cargo on behalf of the Company. Mr. Cotton did not feel inclined to put up quietly with the intrusion, and some correspondence followed which terminated in the letter of the 6th January 1881 to which their Lordships have been so frequently referred. In that letter Mr. Watkins, the manager of the Company, said: "My instructions to all our agents is not to accept any risks beyond their own jurisdiction, except they have first ascertained, beyond a doubt, that we have nothing on the same risks taken either here or at another agency." In terms that is an instruction to all the agents of the Company. to the effect that, if they can discover that the agent in another jurisdiction has no insurance upon a particular risk, they are at liberty to effect an insurance upon it provided they observe in other respects the limits and terms of their instructions. Then an illustration is given. "For instance, if

“ Melbourne is offered a line on a vessel loading
 “ at Adelaide for London, the agents must
 “ ascertain if you are likely to be on the same
 “ vessel. If so, they must either decline the
 “ proposal, or take out a cover in Melbourne
 “ sufficient to protect us from any loss over our
 “ limit. They ought then to ask you to advise
 “ them of the amount accepted in Adelaide.”
 There seems to be nothing unreasonable in that
 adjustment of the terms upon which agents in
 one jurisdiction, might exceed their powers of
 attorney and instructions, and effect insurances
 in another; and it obviously might be very much
 for the interest of the Company that they should
 have such a power, else insurances upon an
 Adelaide vessel, offered at Melbourne, might be
 lost to the Company. But the importance of
 this document is that it refers to all agents, and
 it speaks of “ any risks.” It is not “ agents other
 than you,” but all agents including you. It is
 not the risk of wool, but it is any risk—wool,
 grain, general cargo, or hull. Of course a more
 limited construction may be put upon it. Their
 Lordships merely desire to indicate that the wider
 construction is one which might, in their esti-
 mation, be reasonably put upon it by the person
 to whom it was addressed. That it did disclose
 to Mr. Cotton, when he received it, some new
 ideas as to his method of conducting business, is
 obvious from the terms of his answer. He says :—
 “ Invercauld ”—that is the heading of the
 paragraph in his letter of the 13th January
 1881—“ This misapprehension about this ship
 “ arose from this being the first Adelaide vessel
 “ that had come under my notice as being, in the
 “ first place, in the hands of your Melbourne
 “ agents. Of course I see the propriety of your
 “ method of business, and expect to be guided
 “ by it in future.” That is as distinct an

intimation as could well be given to the Company that he was going to act against outside agents, and other jurisdictions, according to the method in which they had authorised their Melbourne agent to deal with his insurances in his jurisdiction. If that arrangement was never put an end to, or in some way qualified by what followed, it would be quite sufficient to authorise the insurance effected by the Appellant on the cargo of the "Duke of Sutherland" upon the 30th March 1882, because he acted in reverse circumstances towards New Zealand in precisely the same manner as the Melbourne agent had done to South Australia in the case of the "Invercauld."

But then followed, in March 1881, the case of the "Fiona." The "Fiona" was outside his jurisdiction, but he was offered an insurance. He telegraphed to the Company, but it is better to take the terms of his letter. He wrote them in these terms. "The 'Fiona' at Geelong. The 'Ade-laide Marine' have the whole of her cargo of wheat, and offer me 2,000*l.* As my instructions do not refer to vessels in the ports of another Colony, I have telegraphed yourself for instructions. As the wheat is a full cargo, in bags, your reply will probably be 'take 1,500*l.*' This vessel is described as a first-class iron ship." Now, that does show, unquestionably, that, at the time when he wrote that letter, Mr. Cotton had lost sight of, or at least had not clearly before him, the terms of the Company's letter of the 6th January and his own answer made to it on the 13th January 1881. The instructions which they sent him were these:— "You may retain 1,500*l.* in 'Fiona' provided Melbourne has nothing. Should our Melbourne agents have anything by the above ship it will of course be necessary for you to re-insure, Geelong being out of your jurisdiction."

Why "of course?" They refer to that as a matter of course, which he ought to know; and if there be any meaning in the reference, must it not be to their own letter of the 6th January? because what they say in their reply is simply a re-affirmance of what they said in their letter of the 6th, which was in substance this:—
 "If you do keep the risk, Geelong being out of your jurisdiction, the onus of re-insuring lies upon you." In other words, if the Geelong agent has a sum which, together with yours, brings the insurances above our limit, you must reduce it to the limit, and not the agent of the proper jurisdiction.

Therefore it does not appear to their Lordships to be a matter of necessary inference from the terms of that transaction, that the arrangement contemplated and affirmed in the letters of the 6th and 13th January 1881 was at an end, and if that inference is rejected this incident of the "Fiona" becomes rather a confirmation of the terms of the letter of the 6th.

There is one other document only which it is necessary to notice, and that is a letter of the 16th November 1881. The statement in that letter is of some importance:—"Grain ships. You will adhere to the terms of your instructions in regard to this class of risk." If there had been nothing else in the letter than these words, there would have been very plausible grounds for maintaining that it conveyed to the Appellant a distinct intimation that all other arrangements made during the currency of the agency between his principals in Sydney and himself were at an end, and that from thenceforth the terms of the power of attorney and the instructions issued with it were to govern their relations and his acts. But it is impossible to sever that language from the context in which

it occurs ; and the first sentence, " Please observe
" that in future you are at liberty to take 4,000*l.*
" on wool and general produce in first-class ships
" to London from any of the ports named in Class
" A," and the whole subject-matter of the letter
down to the words referring to grain ships, is an
alteration of limit upon the risks. They were
authorising him to add to and enlarge the limit
of risks at all South Australian ports except
Adelaide, by 500*l.*, in the case of wool and
general produce. Nothing could be more natural
than that, in order to put a stop to any doubt
upon the subject, they should warn him that
they do not intend that extension of limit to
apply to grain ships, and it might reasonably be
read as a warning to that effect merely, by a
person who perused the letter, because it is a well
recognised canon of construction, that general
words, may have a very limited meaning im-
pressed upon them when they occur apparently
as a rider upon the subject-matter of the letter.

It is a circumstance which their Lordships
cannot entirely disregard, that in the Court below
the Judge who tried the case, and who refused to
enter Judgement upon the verdict, altered his
opinion upon a deliberate consideration of the
terms of the letter of 6th January 1881 ; and
after hearing counsel fully instead of refusing to
give Judgement, he joined with his two brethren
in affirming that the jury might reasonably put
upon the correspondence the construction which
they indicated by their verdict. It ought rather
to be said that the Judge who had presided at the
trial agreed with one of his brethren, because the
other Judge goes the length of saying that he
approved of the verdict, and had he sat as a
juryman would have concurred in it.

In these circumstances it does not appear to
their Lordships that it is possible to overturn

this verdict on the only ground on which they could set it aside, namely, that no honest jury could reasonably come to the conclusion which is affirmed by the verdict; and they will therefore humbly advise Her Majesty that the Judgement appealed from ought to be affirmed and the Appeal dismissed, the Appellants paying the costs of the Respondent.

