which our attention was drawn; and it follows that the Electric Company is bound by the provisions of that section. I agree with the form of the decree proposed by my learned brother.

Appellant's Advocate's fee will be fixed at Rs. 250 in each appeal, having regard to the nature of the questions involved in these cases.

Attorneys for respondents: *Moresby and Thomas.*

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Curgenven and Mr. Justice Bhashyam Ayyangar.

1930, July 28.

THE OFFICIAL ASSIGNEE OF MADRAS (APPLICANT), APPELLANT,

v.

FRANK JOHNSON SONS & CO., LTD., AND ANOTHER (RESPONDENTS), RESPONDENTS.*

Contract in writing—Construction—Stipulation not expressed in contract—When may be implied—Construction not dependent on nature of consideration.

A Court, in construing a written contract, should not imply a stipulation not expressed therein, merely because it thinks it would be reasonable to imply it; such an implication can be made only if, on a consideration of the terms of the contract in a reasonable and business manner, the Court is satisfied that it should necessarily have been intended by the parties when the contract was made.

Whether a stipulation should or should not be implied is a question relating to the construction of the agreement and does not depend on the nature of the consideration supporting the agreement.

* Original Side Appeal No. 41 of 1928.

OFFICIAL ASSIGNEE OF MADRAS v. FRANK JOHNSON SONS & CO., LTD.

Hamlyn & Co. v. *Wood & Co.* [1891] 2 Q.B. 488, *Lazarus* v. *Cairn Line of Steamships, Ltd.* [1912] 106 L.T. 378, and *Rhodes* v. *Forwood* (1876) 1 App. Cas. 256 followed.

APPEAL from the judgment of WALLER J., dated 6th February 1928, in the Insolvency Jurisdiction in Application No. 431 of 1924 in Petition No. 267 of 1923.

S. Duraiswami Ayyar (*V. Varadaraja Mudaliyar* with him) for appellant.

R. N. Aingar for first respondent.

O. T. Govinda Nambiyar for second respondent.

The JUDGMENT of the Court was delivered by

BHASHYAM AYYANGAR J.

BHASHYAM AYYANGAR J.—This is an appeal by the Official Assignee and as such the assignee of the estate and effects of one Kancherla Krishna Rao, an insolvent, against an order of WALLER J. dismissing an application made by him in the said insolvency, for an order directing both or either of the two respondents, namely, Frank Johnson Sons & Co., Ltd., and the United Refineries, Burma, Ltd., to pay him damages for breach of an agreement. The United Refineries, Burma, Ltd., the second respondent, was an incorporated company formed in 1920 by the Indo-Burma Oilfields, Ltd., and Yomah Oil Co., Ltd., who were both engaged in the production of crude oil in Burma, for erecting, maintaining and operating a refinery for crude petroleum and marketing the products of such refinery, and it had its registered office in Burma. Frank Johnson Sons & Co., Ltd., the first respondent, who apparently did business both at Rangoon and Calcutta, had been appointed the sole selling agents in India of the petrol and other products which might be produced by the second respondent. The agreement which we have to consider was in writing and entered into on the 12th of December 1921 between the present insolvent and the first respondent, the latter acting as selling agents of

the second respondent. It consisted of two memoranda, by the first of which Kancherla Krishna Rao undertook to purchase debenture stock in the Indo-Burma Oil Fields, Ltd., for £20,000, and the first respondent, in consideration thereof, appointed him as the sole distributing agent for the sale of the products of the second respondent, in the Presidency of Madras including its Native States, French Possessions and the Colony of Ceylon, for a period of ten years. The second memorandum laid down and defined the terms of this agency and fixed the rights and liabilities of the parties thereto in detail. It is common ground that Kancherla Krishna Rao paid for the debentures undertaken to be purchased by him, but no products of the second respondent were sent to him for sale. It was alleged on behalf of the second respondent, and not disputed by the appellant, that, for some reason, the second respondent was unable to produce and did not produce any petrol or other products on any commercial scale. The question now emerges, and it is the only one argued before us, whether Kancherla Krishna Rao was, and the appellant, who now represents him, consequently is, entitled to hold both or either of the respondents liable in damages for their omission or failure to supply him with the products for the sale of which he obtained the sole agency.

Now, the primary question of liability undoubtedly turns on the construction of the written agreement above referred to. And that agreement, notwithstanding its formal and detailed nature, does not contain any clause imposing any obligation on either respondent to supply any products to Kancherla Krishna Rao, the agent for sale. If there was no undertaking or promise by the respondents to supply goods or products, it is obvious that no damages could be claimed by Kancherla

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Krishna Rao, or the appellant, against the first respondent or, much less, the second respondent, for any omission or failure to supply them. The learned Advocate for the appellant has contended that, although the written agreement is silent on the point, a promise for the supply of products should be read into it by implication under the circumstances of this case. When he was pressed to particularize the promise which he wanted to have implied in the agreement, with reference to the quantity of the various products and the time of their supply, he could only say that a reasonable quantity of the products produced by the second respondent should have been supplied to Kancherla Krishna Rao.

Whether an implication should or should not be made in a particular case depends on and must be answered with reference to the special facts and circumstances thereof, but the principles which should guide us in the matter have been laid down in several leading cases. The judgment of the learned trial Judge refers to the most important of them. The principle is well settled that a stipulation not expressed in a written contract should not be implied merely because the Court thinks that it would be a reasonable thing to imply it. Such an implication can be made only if, on a consideration of the terms of the contract in a reasonable and business manner, the Court is satisfied that it should necessarily have been intended by the parties when the contract was made. See *Hamlyn & Co.* v. *Wood & Co.*(1) and *Lazarus* v. *Cairn Line of Steamships, Ltd.*(2). Is it possible in the present case to say that, when the present insolvent and the first respondent entered into the contract in question, the former neces-

(1) [1891] 2 Q.B. 488. (2) [1912] 106 L.T. 378.

sarily bargained for, or the latter held out, any definite obligation that the second respondent should refine and send out to the insolvent any products of the kind referred to in the agreement? It seems impossible to answer this question in the affirmative. It will be observed that the implications sought for will be inconsistent and collide with one of the important terms in the agreement, namely, that either party was at liberty to cancel or terminate the agency by merely giving three months' notice in writing. The agreement must, no doubt, have proceeded on the expectation that the second respondent would produce a large quantity of refined products and be in a position to supply Kancherla Krishna Rao with any required quantities thereof for commission sale, but the question is whether there was any and what bargain on these matters. It is not suggested that there was any negotiation or understanding as to the quantities of the products which the second respondent should supply or the present insolvent should receive, or as to any other particulars regarding their consignment. This omission, no less than the absence of any stipulation in the formal agreement on such an important point, clearly cuts at the root of the implication urged on behalf of the appellant.

Going to the authorities, it may at once be mentioned that *Ogdens, Limited* v. *Nelson. The Same* v. *Telford*(1), cited by the learned Advocate for the appellant, does not really help us. The facts of that case were essentially different, and, although there is a reference to the principle of implication in the judgment of COLLINS M.R. in the Court of Appeal, the decision really turns on the construction of an express stipulation, as explained and made clear by the judgments delivered by the House of Lords in the same

(1) [1904] 2 K.B. 410.

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case on further appeal, see 1905 A.C. 109. Damages were granted in that case only for the breach of an *express* stipulation.

The other material cases are *Turner* v. *Goldsmith*(1) and *Rhodes* v. *Forwood*(2). It was argued for the appellant that the facts of the present case more nearly resemble those in *Turner* v. *Goldsmith*(1), which the trial Judge has distinguished in his judgment, than *Rhodes* v. *Forwood*(2), which has been followed by him, but we are not prepared to accept this argument. It seems to us that the present case is entirely on all fours with *Rhodes* v. *Forwood*(2). Here, as there, the contract was one of sole agency; the agency was confined to a specified area; the agent was to sell for commission; the contract was for a fixed period determinable earlier by either party on notice; and there was no express term obliging the principal to send any goods to the agent for sale in his area. The House of Lords held under these circumstances that no implied contract binding the principal to supply the agent with goods could be discovered. In the other case, *Turner* v. *Goldsmith*(1), the facts are materially different. In the first place, the relationship between the principal and the agent appears to have there approximated more to that of an employer and a servant than a manufacturer and a local commission agent for sale; compare the observations of PHILLIMORE J. in *Northey* v. *Trevillion*(3). Secondly, although the contract in that case resembles that in *Rhodes* v. *Forwood*(2) and the present case in being for a fixed term of years, there is this essential difference that, whereas in the latter the parties provided for the termination of the agency by notice even within the prescribed period, there was no such provision in the

(1) [1891] 1 Q.B. 544. (2) [1876] 1 App. Cas. 256.
(3) [1902] 18 T.L.R. 648.

former and the contract was terminable by notice only as from the expiry of the period. Thirdly, the principal in *Turner* v. *Goldsmith*(1) employed the agent for sale not merely of the goods manufactured by him but of those which he could have procured by purchase or otherwise. It appears to us, therefore, that the present case is dissimilar to *Turner* v. *Goldsmith*(1) and falls within the scope of the decision in *Rhodes* v. *Forwood*(2).

It was pressed on behalf of the appellant that the purchase of the debentures of the Indo-Burma Oil Fields, Ltd. for £20,000, which is recited in the agreement in question as consideration for the appointment of the present insolvent as agent, makes an essential difference, but we think it has no bearing as to whether or not a stipulation to supply goods should be implied. Whether a stipulation should or should not be implied is a question relating to the construction of the agreement and does not depend on the nature of its consideration.

It must be held in the result that the order appealed against is right. The appeal is dismissed with costs (one set).

Attorneys for both respondents: *King and Partridge.*

B.C.S.

(1) [1891] 1.Q.B. 544. (2) [1876] 1. App. Cas. 256.