

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Montreal Gas Company v. Vasey, from the Court of Queen's Bench for Lower Canada, Province of Quebec ; delivered 28th July 1900.

Present at the Hearing :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD LINDLEY.

SIR RICHARD COUCH.

SIR HENRY STRONG.

[*Delivered by Sir Henry Strong.*]

On the 15th December 1886 the Appellants entered into a contract with the Respondent for the sale to him of ammoniacal liquor produced by them in their manufacture of gas by the terms of which the Appellants agreed to deliver to the Respondent during a period of five years from the 1st of May 1887 all the ammoniacal liquor they should manufacture at their works. And the Respondent agreed to pay for the same 1*l.* for every ton of sulphate of ammonia he should manufacture from such liquor so long as the net price in London should exceed 9*l.* 10*s.* per ton. The Appellants also agreed to supply the Respondent during the same term with all their spent oxide of iron free of charge. The agreement contained numerous promises of a special character which are not now material to be mentioned.

On the 20th of December 1886 five days after the execution of the contract the President of

the Company wrote to the Respondent the following letter :—

“ Thomas E. Vasey, Esq.,
“ Dear Sir,

“ Montreal,
20th December 1886.

“ Referring to the contract, made with you on the 15th
“ instant for the sale of ammoniacal liquor, I may say that if
“ we are satisfied with you as a customer, we would favourably
“ consider an application from you at the expiration of the
“ term for a renewal of the same for another period.

“Yours truly,
“ (Signed) JESSE JOSEPH.”

At the expiration of the contract of the 15th December the Appellants refused the Respondent's application for a renewal.

The Respondent thereupon brought his action against the Appellants seeking to recover damages for alleged breaches of the contract of the 15th December 1886 and also for the refusal to renew the original contract which as the Respondent alleged they were bound to do according to the terms of the letter of the 20th December.

The Appellants having filed an incidental demand claiming damages for breaches of the original agreement by the Respondent, the parties went to *enquête* and hearing.

Mr. Justice Mathieu before whom the cause was heard awarded damages to the Respondent for the non-fulfilment in several particulars of the original agreement, and also for the non-renewal of the contract in accordance with the obligation to do so which he held to be contained in the letter of the 20th December and in respect of this latter breach of contract the learned Judge condemned the Appellants in damages to the amount of \$10,000 with interest from the date of the judgment. The Respondent's right to recover for the non-performance of a contract supposed to be contained in the letter being together with a question of interest hereafter referred to the only questions involved in this

appeal, the other subjects of contention in the action are now immaterial and need not be further referred to. The Judgment thus rendered in favour of the Respondent having been made the subject of an appeal to the Court of Queen's Bench and the Respondent having also instituted a Cross Appeal these Appeals were heard together, and judgment was thereupon rendered maintaining the first judgment as regards the damages for breach of the contract held to be contained in the letter but allowing the Appeal and altering the judgment of Mr. Justice Mathieu on the question of interest by allowing interest not only upon the \$10,000 in question but also upon the other items of damages awarded to the Respondent from the date of the commencement of the action instead of from the date of the judgment.

The present Appeal is from the judgment of the Court of Queen's Bench just mentioned.

The Appellants insist that the letter of the 20th December 1886 does not contain any contract or agreement susceptible of legal enforcement, and that the judgments of the Courts below which treat it as imposing a legal obligation upon the Appellants are erroneous.

This was the conclusion of the learned Chief Justice in the Court of Queen's Bench who dissented from the judgment of the Court.

Their Lordships are of opinion that the oral evidence admitted on the *enquête* was improperly received. The letter must speak for itself, if there was a contract to renew its terms must be found in the writing. Their Lordships are unable to find in the promise made in this letter that the Appellants would "favourably consider" an application to renew anything legally binding the Appellants; so far from this being so the terms used imply that the Appellants reserved to themselves the right to deliberate on the

question of renewing the contract if the Respondent should apply to them to do so. The utmost that can be said is that the Respondent if he proved to be satisfactory as a customer might as the letter assures him expect favourable consideration. It does not require demonstration to show that such an undertaking falls short of contract.

The Appeal must therefore succeed so far as it is sought to have the damages amounting to \$10,000 for non-renewal and the interest on those damages disallowed.

As regards the alteration made by the Court of Queen's Bench in the original judgment in the matter of interest on the damages not in question on this Appeal their Lordships are unable to see that this alteration was erroneous.

The learned Chief Justice considered that the first judgment must be taken to include interest in the damages awarded up to the date of the judgment; this however does not appear to have been done, and in the absence of any evidence that it was so comprised their Lordships think they must treat interest from the date of the action as not included in the damages. Then as it appears that the Respondent was entitled to recover interest from the date the Appellants were put "*en demeure*" by the service of process the judgment of the Court of Queen's Bench in this respect must be considered not to have been successfully impeached.

Their Lordships will humbly advise Her Majesty to allow the Appeal by discharging so much of the judgment as awards \$10,000 for damages for not renewing the contract and allows interest thereon, and by so varying it as to award no costs to either party in the Court of Queen's Bench. There will be no costs of the present Appeal.
