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*May 7.

*June 24.

THE CORPORATION OF THE CITY { APPELLANT;
OF THREE RIVERS (OPPOSANT).... }

AND

LA BANQUE DU PEUPLE (CON- } RESPONDENT.
TESTANT)..... }

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
LOWER CANADA (APPEAL SIDE).

Bonus—By-law—Conditions of—Conditional mortgage.

By a by-law passed by the city of Three Rivers on the 3rd March, 1886, granting a bonus of \$20,000 to a firm for establishing a saw-mill and a box factory within the city limits, and a mortgage for a like amount of \$20,000 granted by the firm to the corporation, on the 26th of November, 1886, it was provided that the entire establishment of a value equivalent to not less than \$75,000 should be kept in operation for the space of four consecutive years from the beginning of said operation, and that 150 people at least should be kept employed during the space of five months of each of the four years.

The mill was in operation in June, 1886, and the box factory on the 2nd November, 1886. They were kept in operation, with interruptions, until October, 1889, and at least 600 men were employed in both establishments during that time.

On a contestation by subsequent hypothecary claimants of an opposition *afin de conserver*, filed by the corporation for the amount of their conditional mortgage on the proceeds of sale of the property.

Held, reversing the judgment of the courts below, that even if the words "four consecutive years" meant four consecutive seasons, there was ample evidence that the whole establishment was not in operation as required until November, 1886, when the mortgage was granted, the mill only being completed and in operation during that season and therefore there had been a breach of the conditions. Fournier J. dissenting.

APPEAL from the Court of Queen's Bench for Lower Canada (Appeal side) confirming the judgment of the

*PRESENT:—Sir Henry Strong C.J. and Fournier, Taschereau Gwynne and Sedgewick JJ.

Superior Court on a contestation by respondent of
appellant's opposition *afin de conserver*. 1893

The facts connected with this litigation are as follows:—

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In the winter and spring of 1886, a negotiation took place between the firm of Hall, Neilson & Co. and the city of Three Rivers, in reference to the removal to that city of Messrs. Hall & Co.'s lumber mills and the establishment of a box factory.

Messrs. Hall, Neilson & Co. wrote to the city authorities, on 19th January, 1886, that being about to reconstruct their lumber mills at the Grandes Piles, influential citizens of Three Rivers had suggested to them the advantages to the working classes if the mills were removed to that city. That they, Messrs. Hall, Neilson & Co. also intended to establish a box factory, in connection with their mill, which latter was specially adapted for providing the kind of lumber necessary for making boxes. That the operation of said mill and of said box factory would require the employment of at least 150 persons and could provide labour for at least 500 men and 125 horses during the winter season. That in order to realize these advantages, viz., the construction of the said saw-mills and box factory, the said Hall, Neilson & Co. would require assistance from the city of Three Rivers in the form of a cash bonus of \$25,000 and exemption from taxation for 20 years.

Some verbal communications passed between the city authorities and Messrs. Hall, Neilson & Co. and on 22nd February, 1886, a letter of Messrs. Hall & Co. was laid before the City Council, accepting a verbal proposition which had been made by the city, which Messrs. Hall & Co. repeated as follows:—

The bonus to be \$20,000 and the exemption from taxes 10 years, the property to be hypothecated to the city for a term of four years, to the extent of said

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\$20,000, as a guarantee for the fulfilment of the two following conditions, viz.: That Messrs. Hall & Co. should furnish employment during the four years to a sufficient number of employees to equal the work of 150 men during five months each year, and 2nd, the total value of the establishment and dependencies, when completed, to be not less than \$75,000. Messrs. Hall & Co. also undertook in addition, to enter into a personal obligation to continue the establishment in operation for six additional years after the expiry of the four covered by the mortgage. Thereupon the Council by resolution unanimously accepted this proposal and undertook to pay the said bonus of \$20,000 upon the conditions of that letter, and ordered a by-law to that effect to be prepared and submitted to the ratepayers.

These conditions are stated in the by-law as follows:—

1st. The establishment that the Messrs. Hall, Neilson & Co. are at present operating at the locality known as Grandes Piles, on the River St. Maurice, consisting of saw-mills, dryers, machinery, etc., to be transferred to, and rebuilt within the limits of the city of Three Rivers, in a place on the south-west side of the River St. Maurice, and to be there put in operation between this date and the close of the summer of the present year, and further, within same delay and said limits, a box factory to be also constructed and put in operation; and the entire establishment when finished to be of a value equivalent to not less than seventy-five thousand dollars.

2nd. During the course of the fifteen years following the operation of said establishment, the said establishment to be kept in operation for the space of four consecutive years from the beginning of said operation: One hundred and fifty people at least to be kept employed during the space of five months of each of

the four years, and at the termination of said four years  
 said establishment to be continued in operation for at  
 least six of the eleven following years; and the number  
 of people employed during said eleven years to be  
 equivalent to the number of one hundred and fifty  
 people during five months of the year, for the space of  
 six years.

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This by-law was afterward formally adopted by the Council and subsequently, on the 31st March, 1886, by the electors. In fulfilment of their part of the contract, Messrs. Hall, Neilson & Co. proceeded at once to acquire the necessary site within the limits of the city and removed to it their lumber mill from the Grandes Piles and set them in operation in July of that year, 1886.

The box factory was completed on the 2nd November, 1886, and the total cost of the whole establishment is proved to have exceeded \$100,000.

On the 5th November, 1886, Messrs. Hall, Neilson, & Co. wrote to the city that the conditions of the by-law on their part had been fulfilled, entitling them to the payment of the bonus. The City Corporation paid over the \$20,000 without protest or objection, receiving from Messrs. Hall & Co. the four years guarantee in the form of a mortgage. This bore date November 29th, 1886.

The establishment continued in operation until October, 1889, when in consequence of a change in the United States tariff in reference to the admission of boxes, Messrs. Hall & Co. were obliged to discontinue work. They had in the meantime given a second mortgage upon their Three Rivers property to the Banque du Peuple for advances. Financial difficulties followed the closing of the establishment and the property was afterwards sold at sheriff's sale. The city of Three Rivers claimed from the proceeds, by special privilege, the payment of three years arrears of taxes

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and two years water rates, amounting with interest to \$2,555, and in addition the payment of the \$20,000 amount of their mortgage. The bank did not dispute the claim for special water rates but contested the claims for taxes and also for any claim under the mortgage, on the ground that its conditions had been fulfilled, viz., that Hall & Co. had made the expenditure originally stipulated and had employed the equivalent of 150 men for five months of each of four years.

*Irvine* Q.C. for appellants.

The question on this appeal is whether the appellants are entitled to recover on their hypothecary guarantee that Messrs. Hall & Co. would keep in operation, for four consecutive years, 150 men employed during five months in each year at their mill establishment and box factory in the city of Three Rivers. The court below has held that they cannot on the ground that the Messrs. Hall & Co. have executed and fulfilled their obligations *per equipollens*. As the box factory was not completed till November 2nd, 1886, and the whole establishment only began operations in October, 1889, I do not think it can be contended that there has been a specific performance of the conditions upon which the ratepayers voted the bonus and it is the conditions and obligations contained in the by-law itself and not in Messrs. Hall, Neilson & Co.'s letters and petitions, that Messrs. Hall, Neilson & Co. accepted by their hypothecary guarantee in favour of the city. How it can be said that four years means four seasons, and that operations commenced in November, 1886, would be equivalent to one season, I cannot understand.

Then the object of the city being to have a number of men to settle in the town as citizens it cannot be said that it is equivalent to have 600 men employed during one year to 150 men during four consecutive years.

*Martel* Q.C. and *Geoffrion* Q.C. for respondent.

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The main point to be decided according to our contention is whether the first season's operations, some of them prior to the execution of the mortgage and the payment of the bonus, are to be reckoned as one of the four years during which Hall & Co. guaranteed the establishment should be in operation. If it is then there is ample evidence that more than 150 men were employed in Three Rivers in connection with the whole establishment during the season of 1886. Now as the box factory could not be in operation for five months during that season we have complied with that condition, *per equipollens*. See *Simard v. Fortier* (1). Moreover this is the interpretation put on the contract by the city, for when on the 5th November, 1886, Messrs. Hall & Co., when the box factory was only just completed, wrote to the City Council that the conditions of the by-law had been fulfilled and that they had paid wages to date for over 26,200 days, an excess over the contract requirement of 6,700 days, and that the cost of the establishment considerably exceeded their agreement in that respect, the council, who had daily seen the work progressing, paid over the bonus before the expiry of that month and did not collect any taxes for 1886. Nor did the council intimate any different view during the seasons of 1887, 1888 and 1889. No taxes were imposed and no objection made in any form, either that the stipulated expenditure had not been made or that 150 men were not employed in the box factory.

The only claim the appellant could set up might be the personal one (*créancier chirographaire*) as a creditor of Hall, Neilson & Co. for a sum of \$12,000.00 in case the firm of Hall, Neilson & Co. or their assigns neglected fulfilling the conditions of the by-law applying to the six years operation following the first four years; but

(1) Q. R. 1 S. C. 191.

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that firm or its assigns have plenty of time left to yet fulfil these remaining conditions.

BY THE COURT.—The agreement upon which the \$20,000 bonus was lent by the corporation to the respondents is to be found in the by-law of the 3rd March, 1886, and in the mortgage dated the 26th November, 1886. It is apparent that the four consecutive years during which the establishment was to be kept in operation under the second condition of the said by-law, can only date from the month of November, 1886, when the box factory (an important part of the proposed establishment of Messrs. Hall, Neilson & Co.) was completed and put in operation and when the mortgage was granted on a completed establishment of the value of \$75,000, and that the appellants had not in November, 1889, complied with the said second condition of the by-law, viz., the establishment “to be kept in operation for the space of four consecutive years.

FOURNIER, J. dissenting.—Le trois mars 1886, après certains procédés préliminaires, la cité des Trois-Rivières adopta un règlement municipal dans le préambule duquel il est dit que les messieurs Hall, Neilson et Cie ont, par leurs lettres du 25 janvier 1882 et du 22 février 1886, fait application au conseil de la ville des Trois-Rivières pour une aide ou *bonus* et une exemption de taxes municipales en faveur d’une manufacture de boîtes—et attendu qu’il est avantageux d’accéder à la demande des dits Hall, Neilson et Cie, et de leur accorder un *bonus* de \$20,000 et une exemption de taxes sur la dite manufacture, il est en conséquence ordonné :

Sec. 1. Un bonus de \$20,000 et une exemption de taxes municipales sur les immeubles, bâtisses, machineries et outillages érigés et affectés spécialement et

uniquement aux fins de la manufacture, consistant en moulins à scies, séchoirs, manufacture de boîtes et les bureaux de l'établissement, sont accordés aux conditions suivantes :

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1° L'établissement que les messieurs Hall, Neilson et Cie exploitent actuellement à l'endroit appelé les Grandes Piles, sur la rivière St-Maurice, consistant en moulins à scies, séchoirs, machineries, etc., devront être transportés et rebâties dans les limites de la cité des Trois-Rivières, au sud-ouest de la dite rivière St-Maurice, et mis en opération d'hui à la fin de l'été de la présente année, de plus il sera construit et mis en opération, dans les mêmes limites et dans le même délai, une manufacture de boîtes, et tout l'établissement une fois terminé, devra valoir au moins soixante et quinze mille piastres.

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2° Dans le cours des quinze années qui suivront la mise en opération du dit établissement, le dit établissement devra être tenu en opération pendant au moins quatre années consécutives à compter de sa mise en opération, et cent cinquante personnes, au moins, devront y être employées pendant l'espace de cinq mois par année, et à l'expiration des dites quatre années, le dit établissement sera tenu en opération pendant au moins six ans pendant les onze années qui suivront, et le nombre de personnes employées pendant les dites onze années, sera équivalent à un nombre de cent cinquante personnes durant cinq mois par année pendant l'espace de six ans.

Messieurs Hall, Neilson et Cie acceptèrent les obligations contenues dans le règlement, transportèrent le moulin à scies qu'ils possédaient aux Grandes Piles et construisirent la manufacture de boîtes dans les limites de la cité des Trois-Rivières.

L'établissement fut mis en opération partie en juillet et le reste en novembre 1886.



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 THE du *bonus*, fût payée à messieurs Hall, Neilson et Cie.  
 CITY OF C'est cette somme que l'appelante réclame par une  
 THREE opposition en cette cause, en alléguant que messieurs  
 RIVERS Hall, Neilson et Cie n'ont pas rempli les obligations  
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 DU PEUPLE accordée. L'intimée a lié contestation.  
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La seule question qui se présente est de savoir si messieurs Hall, Neilson et Cie ont rempli leurs engagements, 1o, la mise en opération pendant quatre années consécutives depuis la date de sa mise en opération, 2o, si pendant ce temps ils ont employé à leur établissement au moins 150 personnes durant cinq mois chacune des dites années ?

Ce qui a fait la principale cause de la difficulté, c'est l'interprétation erronée que l'appelante a donnée aux règlements. Se fondant sur le préambule des règlements, elle prétend qu'il avait principalement pour but d'établir une manufacture de boîtes et non pas un moulin à scies pour faire concurrence à ceux qui existaient déjà.

La proposition de l'appelante, serait vraie si le règlement consistait dans le préambule seulement. On y voit en effet que messieurs Hall, Neilson et Cie. ont demandé un *bonus* et une exemption de taxes en faveur d'une manufacture de boîtes.

On peut bien invoquer le préambule d'un règlement pour le faire servir à l'interprétation de clauses obscures ou douteuses, mais on ne peut pas plus le faire servir à limiter l'effet des dispositions précises du règlement, qu'on ne pourrait étendre les dispositions d'un statut en se fondant sur les considérants de son préambule.

Dans son factum devant cette cour l'appelante (p. 20) dit que Hall et Cie devront employer durant les quatre premières années d'opération de la manufac-

ture de boîtes, cent cinquante hommes. Elle s'exprime ainsi :

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Moreover the terms of the said by-law are clear and formal and we do not find therein any mention of an equivalent as to the number of men which Messrs. Hall, Neilson & Co. should employ during each of the four first years in *the operating of this box factory, and it is the conditions and obligations contained in the by-law itself* and not in Messrs. Hall, Neilson & Company's letters and petitions, that Messrs. Hall, Neilson & Co. accepted by their hypothecary guarantee in favour of the appellants, dated the 29th November, 1886 (see page 27 and 28 of the case).

La même manière de voir est exprimée comme suit dans son factum du Banc de la Reine.

“Comme on le voit, l'affaire principale, l'objet en vue pour toutes les parties, était la création d'une industrie nouvelle, l'établissement d'une manufacture de boîtes à Trois-Rivières.”

Cette manière de voir qui ferait de la manufacture de boîtes l'objet principal, et presque unique, du règlement n'est pas soutenue par le paragraphe n° 1 du règlement où il est dit que l'établissement que Hall et Cie exploite aux Grandes Piles, sur le St-Maurice, *consistant en moulin à scie, séchoirs, machineries, etc., devront être transportés et rebâtis dans la cité de Trois-Rivières* et mis en opération d'hui à la fin de l'été; de plus il sera construit dans les mêmes limites et dans le même délai, une manufacture de boîtes, et *tout l'établissement* une fois terminé devra valoir au moins soixante et quinze mille piastres.

Les avantages accordés par le règlement étaient donc tout aussi bien pour le transport des moulins des Grandes Piles à Trois-Rivières, que pour la manufacture de boîtes. Le règlement ne fait aucune distinction quelconque entre les deux; mais au contraire ne les considère tous deux que comme un seul établissement, *et tout l'établissement une fois terminé*, dit le

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 mille piastres.

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 Le règlement ne fait non plus aucune distinction entre les moulins à scies et la manufacture de boîtes quant au nombre d'hommes qui devront y être employés. Au n° 2 du dit règlement, il est dit que le dit établissement devra être tenu en opération pendant au moins quatre années consécutives à compter de sa mise en opération, et cent cinquante personnes, au moins, devront y être employées pendant l'espace de cinq mois par année.

Il est évident que le nombre d'hommes qui doivent être employés est fixé pour tout l'établissement, à être, sans doute, distribués suivant le besoin des opérations.

Il est indubitable que l'interprétation émise par l'appelante sur le règlement est erronée.

La preuve faite par l'intimée a établi de la manière la plus positive qu'elle a rempli la première condition, qui était que l'établissement devait être mis en opération avant la fin de l'été 1886 et valoir au moins \$75,000. La preuve a établi ces deux faits de la manière la plus complète.

Quant à la seconde question, au sujet de la durée des opérations et au nombre des personnes qui devaient être employées chaque année à l'établissement, il a été prouvé également que l'établissement a été mis en opération au moins pendant cinq mois chaque année, et pendant plus de vingt mois pour les quatre premières années, et que le nombre de personnes qui y ont été employées excédait celui fixé par le règlement. Il est vrai que ce nombre n'a jamais été employé à la fois dans la manufacture de boîtes qui n'en pouvait pas contenir plus de trente, mais ce que l'intimée affirme et a prouvé, c'est que ce nombre, et au delà, a été employé dans tout l'établissement pendant le temps voulu. C'était suffisant de la part de messieurs Hall, Neilson

et Cie pour remplir leurs obligations, et le règlement n'exigeait rien de plus. 1893

Après un examen sérieux de la preuve, je me suis convaincu que les deux cours qui ont déjà prononcé sur cette cause, en ont fait une juste et correcte appréciation et que leur jugement doit être confirmé avec dépens.

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*Appeal allowed with costs.*

Solicitor for appellant: *L. D. Paquin.*

Solicitor for respondent: *P. N. Martel.*