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*Feb. 28.

*May 6.

HECTOR G. CADIEUX (PLAINTIFF).....APPELLANT;

AND

THE MONTREAL GAS COMPANY (DEFENDANT)..... } RESPONDENT.

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

Contract, construction of—Statute, construction of—12 *Vict. ch.* 183, *s.* 20 *—Contract, notice to cancel—Gas supply shut off for non-payment of gas bill on other premises—Mandamus.*

An agreement to furnish gas contained an express provision that either of the contracting parties should have the right to cancel the contract by giving twenty-four hours notice in writing. Notices were sent in writing to the consumer that his gas would be shut off at a certain number on a street named unless he paid arrears of gas bills due upon another property.

Held, that such notices could not be considered as notices given under the contract for the purpose of cancelling it.

The Act to amend the Act incorporating the New City Gas Company of Montreal and to extend its powers, (12 Vict. ch. 182,) provides: "That if any person or persons, company or companies, or body corporate supplied with gas by the company, shall neglect to pay any rate, rent or charge due to the said New City Gas Company, at any of the times fixed for the payment thereof, it shall be lawful for the company or any person acting under their authority, on giving twenty-four hours previous notice, to stop the gas from entering the premises, service pipes, or lamps of any such person, company or body, by cutting off the service pipe or pipes, or by such other means as the said company shall see fit, and to recover the said rent or charge due up to such time, together with the expenses of cutting off the gas, in any competent court, notwithstanding any contract to furnish for a longer time, and in all cases where it shall be lawful for the said company to cut off and take away the supply of gas from any house, building or premises, under the provisions of this Act, it shall be lawful for the company, their agents and workmen, upon giving twenty-four hours previous notice to the occupier or person in charge, to enter into

PRESENT:—Taschereau, Gwynne, Sedgewick, King and Girouard JJ

any such house, building or premises, between the hours of nine o'clock in the forenoon and four in the afternoon, making as little disturbance and inconvenience as possible, and to remove, take and carry away any pipe, meter, cock, branch, lamp, fittings or apparatus, the property of and belonging to the said company."

Held, Taschereau J. dissenting, that the powers given by the clause quoted are exorbitant and must be construed strictly; that the company has not been thereby vested with power to shut off gas from all the buildings and premises of the same proprietor or occupant, when he becomes in default for the payment of bills for gas consumed in one of them only; and that the provision that the notice to cut off must be given "to the occupier or person in charge," indicates that only premises so occupied and in default should suffer.

APPEAL from the judgment of the Court of Queen's Bench for Lower Canada (appeal side) reversing the judgment of the Superior Court, District of Montreal, which ordered a peremptory writ of mandamus to issue enjoining the defendant to furnish gas to the plaintiff on the conditions usual for such supply in the City of Montreal with costs of suit against the defendant.

The company cut off the supply of gas at plaintiff's residence in Montreal which was not in default for non-payment of bills for gas consumed there, claiming the right to do so on account of there being unpaid arrears due by him for gas consumed in a building belonging to him in another part of the city. The circumstances under which the controversy arose and the questions at issue are stated in the head-note and fully referred to in the judgment of Mr. Justice Girouard now reported.

St. Jean for the appellant.

Brosseau for the respondent.

TASCHEREAU J.—I am of opinion that this appeal should be dismissed. When the statute says that if any person neglects to pay *any* rate, rent or charge due

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for gas, it is lawful for the company to stop the gas from entering the *premises* of any such person (*d'empêcher le gaz de s'introduire dans les édifices de telle personne*), I do not feel at liberty to hold that it does not mean what it says; when it says *les édifices*, it means *tous les édifices*, the premises, all the premises. To restrict this enactment as the appellant contends should be done, would be legislation, not interpretation of the law. The judgment of the Court of Queen's Bench is clearly right.

GIROUARD J.—The appellant is applying for a writ of mandamus to compel the respondent to supply him with gas at his private residence, number 282 St. Charles-Borrommée Street, in the City of Montreal. The Superior Court (Mathieu J.) granted the petition, but in appeal, this judgment was reversed for two reasons:—First, the agreement of the fourth of May, 1887, under which the respondent undertook to furnish gas to the appellant, contains an express provision that

> either of the contracting parties will have the right to cancel this contract by giving twenty-four hours notice in writing

and that such notice was served upon the appellant; and secondly, the appellant having failed to pay his bill for gas supplied, upon his order, to premises known as number 1125 of Notre Dame Street, occupied by a tenant of the appellant, the respondent was justified, under section twenty of its charter, (12 Vict. ch. 183), in cuting off their supply of gas from number 282 St. Charles-Borrommée Street, where he was not in default.

It is not necessary to express any opinion as to whether under the contract of the fifteenth of November, 1895, with the City of Montreal, the respondent could enforce the power to cancel stipulated in the

agreement of the fourth day of May, 1887. It is sufficient to say that the respondents were in duty bound to supply the citizens of Montreal with gas, unless duly relieved from that duty by contract or its charter; as to the contract, we have come to the conclusion that the stipulation above quoted does not apply.

When the respondents cut off the gas they did not intend to enforce it in the present case. No notice in writing was ever given to cancel the contract with the appellant. Witness Burke, one of the clerks in the office of the respondents, says that

> on the first of November I sent notice in writing that we should shut off the gas at number two hundred and eighty-two St. Charles-Borrommée Street, unless he paid the account for number eleven hundred and twenty-five Notre Dame Street, but he took no notice of that.

Another similar notice was sent on the second of December, 1895, and, appellant having paid no attention to it, the gas was shut off on the fifth of the same month.

The collector of the respondents, Darling, corroborated this statement. He notified, verbally, the appellant, that unless the account was paid immediately on the Notre Dame Street premises, the gas supply would be discontinued at number 282 Saint Charles-Borrommée Street.

It is therefore plain, that no notice to cancel the contract was given or even intended to be given, and that the notice sent was the one contemplated by section twenty of 12th Vict. ch. 183.

By that section it is enacted that:—

> If any person or persons, company or companies, or body corporate, supplied with gas by the company, shall neglect to pay any rate, rent or charge due to the said New City Gas Company, at any of the times fixed for the payment thereof, it shall be lawful for the company or any person acting under their authority, on giving twenty-four hours previous notice, to stop the gas from entering the premises,

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service pipes or lamps of any such person, company or body, by cutting off the said service pipe or pipes, or by such other means as the said company shall see fit, and to recover the said rent or charge due up to such time, together with the expenses of cutting off the gas, in any competent court, notwithstanding any contract to furnish for a longer time, and in all cases where it shall be lawful for the said company to cut off and take away the supply of gas from any house, building or premises under the provisions of this Act, it shall be lawful for the company, their agents and workmen, upon giving twenty-four hours' previous notice to the occupier or person in charge, to enter into any such house, building or premises, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, making as little disturbance and inconvenience as possible, and to remove, take and carry away any pipe, meter, cock, branch lamp, fittings or apparatus, the property of and belonging to the said company.

The reading of this clause brings us to the consideration of the second reason advanced by the Court of Appeal in support of their judgment. We do not attach any importance to the use of the word *édifices* in the French version of the statute, to arrive at the true meaning of the word "premises" used in the English version. We believe that the word *édifices* here simply means *lieux* where the gas is consumed and not paid for, and not distinct buildings or premises where no fault exists. "Premises" cannot mean *édifices* only, as gas may be, and is in fact consumed out of *édifices* or buildings, for instance, in the open air, gardens and grounds, parks, streets and avenues. Exorbitant powers like those conferred by section twenty must be construed strictly, and if ever intended to cover all the buildings or premises of the same proprietor, or occupant, when in default with regard to one of them only, must be granted in clear and no ambiguous language. The express provision contained in that section that the notice to cut off must be given "to the occupier or person in charge," plainly indicates that only premises so occupied and in default must suffer. Clause six of the contract of the respond-

ents with the city of Montreal, containing a stipulation that they will "collect and receive the several sums of money at any time due by the gas consumers from the latter only," and not from the city, conveys the same idea. Cutting off the gas is the most efficient mode of collection and must therefore be enforced against the consumer, that is the occupant only of the premises in default. To allow a different interpretation of the words of the statute would lead to the most absurd consequences, as for instance, when the proprietor has ordered gas meters for several premises occupied by different tenants in the same or separate buildings, or when a corporation like the city of Montreal neglects to pay its gas bill on its buildings, or some of them, but not on its streets. These results must be avoided if a reasonable construction of the statutes would permit us to do so. We believe that the interpretation given by the Superior Court is not only reasonable, but that it is the only one contemplated by the legislature. *Sheffield Waterworks* v. *Carter* (1); *In re The Commercial Bank of Canada* and *The London Gas Company* (2).

For these reasons we are of opinion that the appeal should be allowed and the judgment of the Superior Court restored with costs in all the courts.

GWYNNE, SEDGEWICK and KING JJ. concurred.

*Appeal allowed with costs.**

Solicitors for the appellant: *Préfontaine, St. Jean, Archer & Décary.*

Solicitors for the respondent: *Bisaillon, Brosseau & Lajoie.*

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(1) 8 Q. B. D. 632. (2) 20 U. C. Q. B. 233.

* Leave has been granted for an appeal from this judgment to the Judicial Committee of the Privy Council.