

1904

*May 20.

*June 8.

CONNOLLY v. THE CITY OF SAINT JOHN.

Contract—Implied covenant—Damages—New trial.

APPEAL from the judgment of the Supreme Court of New Brunswick, *in banco* (1), setting aside the judgment entered upon the verdict at the trial and ordering a new trial.

The plaintiff entered into a contract with the city for three hundred and thirty hours dredging and for so much longer as the city might require by notice at the end of that period, to be paid for at a stated rate subject to deductions for time that the dredge was unable to work by reason of injury to the plant or machinery and interruptions caused by the state of the weather. Delays were caused on account of the water being too deep at high tides for the dredge to work but, although both parties were aware that this interference would occur at high tides at the time the contract was made, there was no provision made for any allowance or deduction on that account. The judgment appealed from held that a verdict for the plaintiff, returned on the construction that there was an implied covenant that the city should pay for the time lost by reason of the high tides was erroneous and, consequently, set it aside and ordered a new trial.

After hearing counsel for the parties the Supreme Court of Canada reserved judgment and, on a subsequent day, dismissed the appeal with costs.

*Appeal dismissed with costs.**Aylesworth K.C.* for the appellant*Skinner K.C.* for the respondent.

*PRESENT:—Sir Elzéar Taschereau, C. J. and Sedgewick, Girouard, Davies and Killam JJ.

(1) 36 N. B. R. p. 411.