

1945  
\*Oct. 4, 5

MISSION SAWMILLS LIMITED

(DEFENDANT) .....

APPELLANT;

AND

GILL BROTHERS (PLAINTIFFS) ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR  
BRITISH COLUMBIA

*Contract—Finding of, on the evidence—Contract to sell all fuel wood produced at mill—No stipulation in contract as to its duration—Lack of reasonable notice of termination—Contract wrongfully determined—Damages.*

APPEAL by the defendant from the judgment of the Court of Appeal for British Columbia (1) dismissing (Sidney Smith J. A. dissenting) the defendant's appeal from the judgment of Bird J. (2) who held that there was a binding agreement entered into between the defendant and the plaintiffs whereby the defendant would sell to the plaintiffs all fuel wood produced at the defendant's mill at certain prices and the plaintiffs would buy at such prices and take delivery at said mill and keep clear the wood bunker at said mill; that the agreement was subsisting when it was terminated by a notice given by the defendant; that the agreement was for an undetermined time; that it was subject to termination by either party, only upon reasonable notice; that the notice given by the defendant was not reasonable; and therefore the agreement was wrongfully determined by the defendant, and the plaintiffs were entitled to damages. (Whether the agreement was a terminable agreement would seem to have been doubted by Robertson J.A., one of the majority in the Court of Appeal; but he found it unnecessary to express any opinion upon that question).

*Alfred Bull K.C.*, for the appellant.

*C. K. Guild K.C.* for the respondents.

On conclusion of the argument of counsel for the appellant, the Court adjourned to the following day, and, on the opening of Court on said following day, the Court,

\*PRESENT:—Kerwin, Taschereau, Rand, Kellock and Estey JJ.

(1) [1945] 2 W.W.R. 337; [1945] 3 D.L.R. 506.

(2) [1944] 3 W.W.R. 310.

without calling on counsel for the respondents, dismissed the appeal with costs; Kerwin J. reading orally for the Court the following reasons:

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BROS.

KERWIN, J.—It will be unnecessary to call upon you Mr. Guild. Mr. Bull has said all that was possible in support of the appellant's contention that there was no contract but, having had an opportunity of considering the evidence, we are all of the opinion that the trial judge and the Court of Appeal came to the right conclusion that there was a valid contract between the parties, entered into in April, 1942. It contained no stipulation as to its duration but the trial judge found, and the Court of Appeal agreed with him, that it was subject to termination upon reasonable notice, that the six days' notice given by the appellant on June 24th, 1943, was unreasonable, that the contract was wrongfully determined on June 30th, 1943, and that six months' notice would have been reasonable. It was therefore referred to the District Registrar at Vancouver to inquire and certify what damages the respondents have sustained during the period from June 30th, 1943, to December 24th, 1943, by reason of the wrongful termination of the contract of April, 1942.

We are unable to agree with Mr. Bull's alternative contention that if the Court agreed with the courts below that such a contract had been made it could be terminated at any time. Speaking generally, a contract indefinite in time is *prima facie* perpetual. The respondents do not quarrel with the finding that the contract in question was determinable upon six months' notice and no other period has been suggested. In order to avoid any question, we think it proper to state that the damages to which the respondents are entitled must be fixed on the basis of the alterations in the original contract, assented to by the respondents and referred to in the reasons for judgments of the trial judge and the Court of Appeal.

The appeal fails and must be dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for the appellant: *C. Carmichael.*

Solicitors for the respondents: *Hamilton Read & Paterson.*