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MARCEL LANGLOIS (*Plaintiff*) APPELLANT;

*May 20, 21
*Apr. 24
*Oct. 2
*Oct. 24

AND

CANADIAN COMMERCIAL CORPORATION (*Defendant*) } RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

Crown—Liability of Crown agent to pay interest—Canadian Commercial Corporation—Money awarded by provincial Court as liquidated damages—Whether interest can be allowed against corporation—The Canadian Commercial Corporation Act, 1946 (Can.), 10 Geo. VI, c. 40, ss. 3, 9, 10, 15.

If judgment is given in a provincial Court against Canadian Commercial Corporation for damages for breach of contract, interest on the damages can be allowed against the corporation pursuant to the general law of the province. By virtue of s. 10 of the *Canadian Commercial Corporation Act*, the obligation incurred by the corporation on behalf of the Crown is to be considered as having been incurred by the corporation itself. It is therefore in the same position as any other private corporation.

APPEAL from the judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec (1), affirming, Barclay and McDougall JJ. dissenting, the judgment at trial.

The appeal was argued on March 20 and 21, 1956, and judgment (2) was delivered on April 24, 1956, reversing the judgment appealed from and holding the defendant liable to the plaintiff for breach of contract for \$20,000, with costs and with interest from the date the defendant was put *en demeure* by the service of process, on the authority of *Montreal Gas Company v. Vasey* (3). Leave was obtained by the defendant to argue the question of the liability for interest, which had not been raised at the hearing of the main appeal. The defendant accordingly moved to vary the judgment in respect of interest, and the reasons for judgment now reported are those delivered, following that reargument, on the motion to vary.

G. Favreau, Q.C., and *P. Ollivier*, for the defendant, respondent, applicant on the motion to vary.

*PRESENT: Kerwin C.J. and Taschereau, Kellock, Fauteux and Abbott JJ.

(1) [1954] Que. Q.B. 247.

(2) (1956), 4 D.L.R. (2d) 263.

(3) [1900] A.C. 595.

V. Pager, Q.C., and F. Auclair, for the plaintiff, appellant,
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The judgment of Kerwin C.J. and Fauteux and Abbott JJ. was delivered by

THE CHIEF JUSTICE:—By leave of the Court we heard argument upon a point not previously raised. It is now contended that the respondent is an agent of the Crown and that its predecessor, Canadian Export Board, acted as such in the negotiations which, as we have held, resulted in a contract between the latter and the appellant; that the Crown may not be charged with interest on any principal sum, except by virtue of a special statutory provision, or of its own consent; that the respondent is in the same position as the Crown and, therefore, interest should not be allowed.

The respondent is the successor of the Canadian Export Board, whose rights and obligations under the contract it inherited, and was established by a Statute of Canada of 1946, 10 Geo. VI, c. 40, ss. 3(5), 9, 10 and 15(2) of which are as follows:—

3. (5) The Corporation is for all its purposes an agent of His Majesty and its powers may be exercised only as an agent of His Majesty.
9. The Corporation may, on behalf of His Majesty, contract in its corporate name without specific reference to His Majesty.
10. The Corporation may sue and be sued in respect of any right or obligation acquired or incurred by it on behalf of His Majesty as if the right or obligation had been acquired or incurred on its own behalf.
15. (2) From the day this Act comes into force, all rights and obligations acquired or incurred by the Canadian Export Board shall, for the purposes of legal proceedings, be deemed to have been acquired or incurred by the Corporation on behalf of His Majesty.

Reading these together, it seems clear that, while the respondent may only exercise its powers as agent of the Crown, that is because it is not in the general business of buying and selling goods and merchandise, but only for the limited purposes as set forth in the other provisions of the Act. As long as it keeps within the powers thus conferred, it may, by s. 9, contract in its corporate name without

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specific reference to His Majesty, and by s. 10, which is the important provision, not only may it sue and be sued in respect of any right or obligation acquired or incurred by it on behalf of His Majesty (which includes the contract in question made with Canadian Export Board), but some meaning must be attached to the latter part of the section "as if the right or obligation had been acquired or incurred on its own behalf". If the obligation in this case had been incurred on its own behalf, the decision of the Judicial Committee in *International Railway Company v. Niagara Parks Commission* (1) would apply. It was there held that there was nothing to prevent an agent from entering into a contract on the basis that he is himself to be liable to perform it as well as his principal and that the Commissioners, having entered into a certain agreement "on their own behalf", as well as on behalf of the Crown, had done so on the express terms that they were to be liable for its fulfilment. By the latter part of s. 10 of the respondent's Act, the obligation here in question is to be taken to have been incurred on its own behalf. It is, therefore, in the same position as if it were not an agent for the Crown and it is subject to the general law of the province of Quebec, as the case was fought on the basis that it was the law of that province that was applicable.

The point now taken by the respondent is without foundation and it must pay the costs of the motion asking for leave to raise it and of the new argument.

The judgment of Taschereau and Kellock JJ. was delivered by

KELLOCK J.:—The respondent contends that interest ought not to have been included in the amount for which judgment was directed to be entered and moves to vary accordingly.

By s. 3(5) of the *Canadian Commercial Corporation Act, 1946* (Can.), 10 Geo. VI, c. 40, it is provided that:—

(5) The Corporation is for all its purposes an agent of His Majesty and its powers may be exercised only as an agent of His Majesty.

It is contended, in view of this provision, that the Corporation cannot be subjected to any greater liability than the Crown itself and that had the Crown been sued in the

(1) [1941] A.C. 328, [1941] 2 All E.R. 456, [1941] 3 D.L.R. 385, [1941] 2 W.W.R. 338, 53 C.R.T.C. 1.

Exchequer Court, as it might have been, s. 47(b) of the *Exchequer Court Act*, R.S.C. 1952, c. 98, would have been a bar to the recovery of interest. It may be noted that the contract here in question is in writing.

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Assuming this contention to be otherwise sound, s. 10 of 10 Geo. VI must be considered. That section reads as follows:—

10. The Corporation may . . . be sued in respect of any . . . obligation . . . incurred by it on behalf of His Majesty as if the . . . obligation had been . . . incurred on its own behalf.

In my opinion, the proper interpretation of this provision is that, once it is determined in any case that the contract sued on falls within the ambit of the statute, the case against the corporation thereafter proceeds in the provincial Court as though the “obligation” of the corporation sought to be enforced “had been incurred on its own behalf”, that is, had been incurred by the corporation itself. Had such been the case then unquestionably arts. 1067 and 1077 of the *Civil Code* would apply and the corporation would be liable for interest. The contention that the section merely permits the corporation to be sued instead of the Crown renders, in my opinion, the words “as if the obligation had been incurred on its own behalf” mere surplusage. To give any meaning to these words, I think they must be construed as indicated above, namely, that it is the express intention of the statute that the corporation shall stand in the same position before the Court as any private corporation.

Accordingly, the motion must be dismissed with costs.

Appeal allowed with costs; motion to vary dismissed with costs.

Solicitors for the plaintiff, appellant: Deslauriers, Trépanier & Auclair, Montreal.

Solicitor for the defendant, respondent: A. Nadeau, Montreal.
