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* Feb. 28.
* Apr. 21.

ALEXANDER M. STEWART (PLAINTIFF) ..... APPELLANT;

AND

HANOVER FIRE INSURANCE COMPANY (DEFENDANT) ..... RESPONDENT.

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

Lease—Lease and hire of work or personal services—Tacit renewal—General provisions as to lease or hire of things applicable to lease and hire of work or personal services—Right of master to dismiss servant and right of servant to quit service—Notice to be given by both within delay prescribed by law—Arts. 1608, 1609, 1642, 1657, 1667, 1670 C.C.

Tacit renewal of a contract of lease or hire of work or personal services prolongs that contract for another year, or for the term for which such lease was made, if less than a year.

The Civil Code treats the lease or hire of work or personal services as coming under the subject and general provisions of lease and hire, and both contracts, that having things for its object and that having work for its object, are dealt with by the Code under the same general title. (Arts. 1600 and seq. C.C.). Therefore the intention of the legislature and of the Civil Code in using the words "tacit renewal" in connection with the lease and hire of work or personal services in article 1667 C.C., was that it should convey the same meaning, carry the same effect and be governed by the same rules, *mutatis mutandis*, as tacit renewal operating in the case of a contract for lease or hire of things. Accordingly, under article 1667 C.C., as under article 1609 C.C., tacit renewal will operate in the case of lease or hire of work or personal services if the lessee continues to give his services beyond the expiration of the term originally fixed, without any opposition or notice on the part of the lessor; and applying the terms of article 1609 C.C., in such a case, the lessor, or servant, will not have the right thereafter to leave the service of the master, or the master will not have the right to dismiss the servant unless notice has been given within the delay required by law.

As to the length of such notice, the provisions of article 1657 and 1642 C.C. relating to lease or hire of things, may be made applicable to the lease or hire of work or personal services.

Asbestos Corporation Ltd. v. *Cook*, ([1933] S.C.R. 86) has no application to the present litigation. That case was not dealing with the question of tacit renewal, but with a contract of lease for personal services for an undetermined period of time. Even that contract could not be terminated without giving a notice of a reasonable delay.

Also: although it had been held in the *Asbestos* case that article 1642 C.C. was not applicable to a lease of personal services for the purpose of determining the length of the contract, it has not been decided in that case that article 1642 C.C. could not be applied to leases of personal

* PRESENT:—Duff C.J. and Rinfret, Cannon, Crocket and Davis JJ.

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services, in so far as it is referred to in article 1657 C.C., for the purpose of computing the delay of the notice required to terminate a contract prolonged by tacit renewal.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), reversing the judgment of the Superior Court, Greenshields C.J., and dismissing the appellant's action for damages for wrongful dismissal from the respondent company's employ.

The material facts of the case and the questions at issue are stated in the judgment now reported.

F. P. Brais K.C. for the appellant.

C. A. Hale K.C. for the respondent.

The judgment of the Court was delivered by

RINFRET J.—The appellant was manager for Canada, chief agent and chief attorney of the respondent company. He had assumed this office on or about the end of October, 1928, under an agreement entered into between the parties in Montreal. Under the terms of the agreement, the services of the appellant were retained for one year from December 1, 1928, at a salary of $6,500 per annum; but it was understood that, both sides being satisfied with the results obtained, the salary for the year 1930 would be $7,500.

It was also then and there expressly agreed that the appellant would receive an additional compensation of 10 per cent, based on certain items of "income and outgo," more particularly described in the memorandum accepted and initialed by the appellant and also by the respondent through its president and secretary.

At the end of the year 1929, both parties were apparently satisfied of the results obtained, for the appellant continued in the service of the respondent at the higher salary of $7,500 per annum.

The contract was silent as to the terms of payment of the salary. It can be said, however, with certainty that during the time the appellant was in the employ of the respondent he received his payment in fortnightly amounts.

As a matter of fact, at the trial, the secretary of the respondent testified that this arrangement as to the period

(1) (1935) Q.R. 59 K.B. 175.

at which the appellant should receive his salary was made when the contract was first entered into. There was a controversy on that point, the appellant swearing that the drawing of his salary was entirely left to himself, although, as a matter of convenience, he usually drew it every two weeks. The trial judge, interpreting this evidence, held that the appellant's salary was

payable by the year and only at the expiration of a year of services.

On the contrary, the Court of King's Bench found

que, d'après la preuve qui a été faite à ce sujet, il a été établi qu'il avait été convenu dès le début que le salaire de l'intimé lui serait payable tous les quinze jours.

In the result, the divergence of views on this question of fact is the true basis of the difference in the conclusion reached by each court in this case.

But before we discuss them, we must complete our statement of the facts.

As already mentioned, at the expiration of the first year of services, to wit, on December 1, 1929, the appellant continued in the employ of the respondent. For the year 1930, the appellant was paid at the rate of $7,500 per annum, the contract in other respects remaining the same, in full force and effect.

At the expiration of the second year (December 1, 1930), and again at the expiration of the third year (December 1, 1931), the relations between the parties continued as they were; when, on October 21, 1932, the respondent company, through its secretary, notified the appellant that his services would no longer be required, at the same time informing him that his salary would be paid until December 1, 1932.

The appellant took exception to the respondent's action, expressed his willingness to continue in his position and to abide by and carry out his contract until December 1, 1933. But the respondent having persisted in the stand already taken, the appellant left the employ of the respondent; and, in due course, brought this action to recover the sum of $7,012.50, for what he alleged to be an illegal and an unjustified cancellation of his contract of engagement.

The defence was that the contract, under its terms and by force of law, expired on December 1, 1932; and that the respondent had refused to renew it and had expressly notified the appellant accordingly on October 21, 1932, a prior

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notice which was usual, reasonable and lawful. Moreover, the refusal to renew the contract for another year had been accepted and acquiesced in by the appellant. But, in addition to these formal grounds of defence, the respondent alleged it had refused to renew the contract for good, valid and sufficient cause the particulars of which were given in the plea.

Both courts in the province of Quebec refused to entertain the alleged grounds of acquiescence on the part of the appellant and of dismissal for cause. They were not renewed at bar in this Court and they may be taken for abandoned to all intents and purposes.

The Superior Court maintained the appellant's action to the amount of $5,312.50 for the reason mainly that, in the view that the Court took of the contract, the appellant's salary was payable by the year and, consequently, a notice of at least three months was necessary and required to put an end to the contract and relieve the respondent from a claim in damages.

On the other hand, the Court of King's Bench thought the evidence clearly showed that the salary was payable fortnightly and, accordingly, a notice of fifteen days prior to the 1st December, 1932, was amply sufficient to prevent the tacit renewal of the contract for another year. Moreover, the Court expressed the opinion it might even be held that no notice whatsoever was required, since, in the state of the law in the province of Quebec, the contract expired of its own terms on the 1st December, 1932. The appeal was, therefore, allowed and the action of the appellant dismissed.

The appellant now seeks to have the judgment of the Superior Court restored.

As will have been noticed, the judgments submitted to us turned practically on the question whether the salary of the appellant was legally payable yearly or fortnightly.

An admission was made, at the trial, by the respondent in the following terms:

> The defendant admits in open court that the contract between the parties was an annual contract for one year, tacitly renewed from year to year and was in full force and effect.

In a special factum filed in the trial court, the respondent stated:

> The defendants agree with the plaintiff's (now appellant) statement that he had an original contract for one year and that it was renewed.

They contend, however, that the notice of termination of between five and six weeks, given on October 21, 1932, was ample to terminate their contract on December 1, 1932. The whole case, therefore, centers around the sufficiency of the notice.

The above admission and the above statement were referred to by the trial judge and by the Court of King's Bench in their respective judgments; and each treated the litigation as being limited to the question of the sufficiency of the notice.

The contract now under discussion is called in the Quebec Civil Code a contract for the "lease and hire of work." It is governed by arts. 1666 & seq. contained in chapter 3rd of the general title (seventh) concerning lease and hire; the first chapter of the title dealing with general provisions, and the second chapter thereof dealing with the lease or hire of things.

The material articles of the third chapter having to do with the present case are:

1667. The contract of lease or hire of personal services can only be for a limited term, or for a determinate undertaking.

It may be prolonged by tacit renewal.

1670. The rights and obligations arising from the lease or hire of personal services are subject to the rules common to contracts.

(N.B. The balance of the article is immaterial here).

As a result of the admissions, we have it in this case:

1. That the contract between the parties was originally for one year;

2. That it was tacitly renewed from year to year;

3. That the notice of termination was given on October 21, 1932, to terminate the contract with the appellant on December 1, 1932; and

4. That the whole case centres around the sufficiency of the notice.

The consequence is, as very properly held by the Superior Court, that the present case is taken out of the application of the decision of this Court in *Asbestos Corporation Ltd.* v. *Cook* (1).

In that case, the whole discussion turned upon the length of a contract of lease and hire of work, the duration of which was not fixed, and the salary being stipulated at "$6,000 per annum, dating from the 1st May, 1927, payable $500 a month." It was held that, according to its literal meaning, a contract of lease or hire of personal ser-

(1) [1933] S.C.R. 86.

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vices at so much per year, or per month, is not a contract for a fixed period, but one for an indeterminate period; and that there was no provision in the Civil Code to the effect that the contract of hire of personal services whose duration has not been agreed upon will be deemed to have been made for one year when the salary has been fixed at so much per year.

On the precise point herein involved, *Asbestos Corporation Ltd.* v. *Cook* (1) has no application to the present litigation. There exists here no dispute with regard to the length of the original contract, since the parties agree that it was made for one year.

The engagement of the appellant under the terms of the contract would, therefore, have ended on the 1st of December, 1929, without there being any necessity for a notice from one side or the other.

But the parties agree that the contract was prolonged by tacit renewal. And although article 1667 of the Civil Code enacts that this may be done, it is absolutely silent on the terms and conditions whereby the tacit renewal is to be governed.

Contrary to what was said in the Court of King's Bench, this Court, in the *Asbestos* case (1), did not decide that

> la tacite reconduction n'avait pas eu lieu pour une autre année mais plutôt pour un temps indéterminé, mais cela pour le motif que le contrat d'engagement originaire n'avait pas été fait pour un an, comme l'avait décidé la Cour d'Appel, mais pour un temps indéterminé.

The view expressed by us was that in the *Asbestos* case (1) the question of tacit renewal did not arise:

> Et si le contrat était, comme nous le décidons, pour une période indéterminée, il ne pouvait être question de tacite reconduction. En effet, comme le fait remarquer Mignault, Droit civil canadien, vol. 7, p. 371: "Pour qu'il y ait lieu à tacite reconduction, il faut qu'il y ait un terme convenu ou présumé pour la durée du service."
>
> La tacite reconduction n'a lieu que si les relations des parties persistent après l'expiration de la date fixée au bail de services; dans le cas d'un louage pour une période indéterminée, le cas ne saurait se présenter.

The question now submitted is, therefore, fully open in this Court. Of course, as was pointed out, both parties appear to agree that tacit renewal of a contract of lease or hire of personal services originally made for a year prolongs that contract for another year. Such is the contention put forward by the appellant in his declaration; and such is also the effect of the admission made by the respondent and already referred to:

(1) [1933] S.C.R. 86.

that the contract * * * was * * * tacitly renewed from year to year and was in full force and effect

at the time when the notice was given.

Our view of the law agrees with the admission. Might it be said at once that, on this subject, no guidance can be found in the jurisprudence of the courts of France or in the doctrine of the French writers, because the law is not the same.

Under what terms and conditions is the lease and hire of work prolonged by tacit renewal in the province of Quebec?

The words "tacit renewal" are employed in the Civil Code in articles 579, 1608, 1609, 1610, 1611, 1667, and nowhere else.

In all these articles, they are used exclusively in connection with leases. Every one of these articles is contained within the title of "Lease and Hire," except art. 579 dealing with emphyteutic lease and which refers to it only to provide that "emphyteusis is not subject to tacit renewal."

Otherwise, the Civil Code treats the lease or hire of personal services as coming under the subject and general provisions of lease and hire; and both contracts, that having things for its object or that having work for its object, are dealt with by the Code under the same general title (Arts. 1600 & seq. C.C.).

It is, therefore, strictly in conformity with the usual rules of interpretation that the same words, used in the same legislation, will, unless the context compels a different construction, be interpreted as having the same meaning.

It would follow that, in the minds of the codifiers and of the legislature, the words "tacit renewal," in art. 1667 C.C., in connection with the lease and hire of work, must have been used for the same purpose and within the same meaning as the identical words in another chapter of the same title of the Civil Code dealing with the lease or hire of things.

As a matter of fact, "tacit renewal," as expressed in articles 1608, 1609, 1610 and 1611 C.C., is used for the same purpose and with the same effect as in article 1667 C.C., to wit: the tacit prolongation of a contract of lease originally made for a fixed period and which is allowed

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by the parties to last beyond the length of time originally agreed upon.

Under the circumstances, our view is that the intention of the legislature and of the Civil Code in using the words "tacit renewal" in connection with the lease and hire of personal services, in article 1667 C.C., was that it should convey the same meaning, carry the same effect and be governed by the same rules, *mutatis mutandis*, as tacit renewal operating in the case of a contract for lease or hire of things.

In the case of things, tacit renewal operates

if the lessee remain in possession more than eight days after the expiration of the lease, without any opposition or notice on the part of the lessor (Art. 1609 C.C.).

In a similar way, under article 1667 C.C., will tacit renewal operate in the case of personal services (provided, of course, they were not leased for a determinate undertaking), if the lessor continues to give his services beyond the expiration of the term originally fixed, without any opposition or notice on the part of the lessee.

By force of article 1609 C.C., tacit renewal of the lease of things

takes place for another year, or the term for which such lease was made, if less than a year.

Likewise, tacit renewal of a lease of personal services will take place for another year, unless the term for which such lease was made is less than a year.

But, alike in the lease of things or real property, where "the lessee cannot thereafter (i.e., after tacit renewal) leave the premises or be ejected from them, unless notice has been given within the delay required by law" (Article 1609 C.C.), in the lease of work prolonged by tacit renewal, the lessor, or servant, will not have the right thereafter to leave the service of the master, or the master will not have the right to dismiss the servant, unless notice has been given within the delay required by law.

Applying this view of the law to the contract between the appellant and the respondent, it means that when the original lease of the personal services of the appellant (which was made for one year) was prolonged by tacit renewal, it was prolonged for another year from December 1, 1929, to December 1, 1930.

But it also means that, once having been prolonged beyond the term originally fixed in the contract ("terme

conventionnel"), it was no longer a contract which, by its very terms, was to terminate at a fixed date mutually agreed upon; it became a contract which, by law, was presumed to be prolonged for another period of time fixed by the law itself, and with the proviso that it would terminate upon one or the other party giving a notice "within the delay required by law."

We cannot acquiesce, therefore, to the somewhat novel suggestion made by the Court of King's Bench that a contract of lease prolonged by tacit renewal ought to be considered as a contract for a fixed period of time terminating at the expiration of that time without any notice being required from one party or the other. This new doctrine would have the effect of applying to the tacit renewal of leases of work the provision of article 1609 C.C. in part only, without the qualification that there must be a notice to put an end to a lease so renewed. We can see no reason why, if the tacit renewal provided for in article 1667 C.C. is to be assimilated to the tacit renewal in article 1609 C.C., the provisions of the latter article should not apply in full.

We may add that counsel for the respondent was utterly unable to find any precedent in the jurisprudence of the province of Quebec in support of such a proposition. So far as we have been able to ascertain, the decisions in the province of Quebec have consistently been in the other direction.

May we part with this point by referring to the following passage of Mr. Mignault, in his Droit Civil Canadien (vol. 7, p. 348), with which we completely agree:

> Ce qui est abondamment clair c'est que le congé est requis pour mettre fin à tout bail, écrit ou verbal, dont la durée n'a pas été déterminée, ainsi qu'au bail présumé de l'article 1608 et au bail continué par tacite reconduction.

Article 1609 C.C., by its clear terms, requires a notice to be given in order to terminate a lease which has been tacitly renewed; but the article itself does not contain any provision as to the length of the notice required to be given. In the case of lease of things, the rule invariably followed, and which in our view is the right one, is, for the requirements of the law in respect to notice, to look to article 1657 C.C.

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To use the words of Planiol and Ripert (vol. 11, no. 859):

D'une manière générale la durée du délai est en rapport avec les époques de paiement du salaire. * * *

We see no difficulty in accepting this guidance equally for the delay with which a notice ought to be given in order to terminate a contract for the lease or hire of work prolonged by tacit renewal. In fact, this would seem to be in accordance with the principles of good sense; and, unless we are greatly mistaken, we think it is also in accordance with the regular practice of the courts in the province of Quebec. At least, this would appear to be the effect of the numerous cases cited to us by counsel on both sides in the present case.

No disapproval of that practice can be found in our judgment in *Asbestos Corporation Ltd.* v. *Cook* (1), contrary to what seemed to have been the impression of counsel for the respondent, both in his factum and in his argument.

It should be emphasized, as already pointed out at the beginning of this judgment, that the *Asbestos* case (1) had nothing to do with the question of tacit renewal. Our judgment in that case was dealing with a contract of lease for an undetermined period of time.

But, even in a case of that character, this court decided that the contract could not be terminated without giving a notice of a reasonable delay; and that, on this point,

l'article 1657 du Code pose une règle qui peut servir de guide (2).

Now, article 1657 C.C. requires a notice of three months prior to the expiration of the contract prolonged by tacit renewal, if the rent be payable at terms of three or more months; if, however, the rent be payable at terms of less than three months, the delay is to be regulated according to article 1642; which means that if the rent be payable at terms of a month, the notice must be given with a delay of one month; if for a day, then the notice must be with a delay of one day.

In the *Asbestos* case (1), we discussed the question of the application of article 1642 C.C. to a lease of personal services, and we held that it was not applicable to such a lease for the purpose of determining the length or the duration of the contract, since it was clear that the article

(1) [1933] S.C.R. 86.

(2) [1933] S.C.R. 86, at 100.

was, by its very terms, a rule peculiar to the lease or hire of houses. There was, however, no intention of extending the principle beyond the subject-matter in discussion in that case, or, in other words, beyond the question of the length of the lease. The words of The Earl of Halsbury, L.C., in *Quinn* v. *Leathem* (1) are apposite:

> Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be an exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found * * * , a case is only an authority for what it actually decided.

We did not decide in the *Asbestos* case (2) that article 1642 C.C. could not be applied to leases of personal services, in so far as it is referred to in article 1657 C.C. for the purpose of computing the delay of the notice required to terminate a contract prolonged by tacit renewal. That is an entirely different question from the question in issue in that case.

We thought we would make the above statement so as to remove any misapprehension in that regard; but in the view we take of the present case, it is not necessary to rely on article 1642 C.C., for article 1657 C.C. is sufficient for our decision.

The appellant, it is true, under the terms of his contract with the respondent, was being paid a salary of $7,500 per annum. The contract itself was silent as to the time of payment of the salary. There was a question whether it was part of the contract that the salary should be paid fortnightly. The trial judge held that it was payable yearly. Under all circumstances, this would be a question of fact as to which due consideration would have to be given to the finding of the court of first instance.

But a point which seems to have been overlooked by the Court of King's Bench and as to which considerable argument was offered to this Court is that the salary of $7,500 per annum was not the only, nor the whole compensation which the appellant was entitled to receive under his contract. There was provision for an "additional compensation" in the form of a commission of 10% based on certain specified items of income and outgo to be computed at the end of the year. The "rent" in respect to

(1) [1901] A.C. 495,, at 506. (2) [1933] S.C.R. 86.

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the payment of which the delay for the giving of the notice is to be computed under article 1657 C.C. evidently, in the case of the present appellant, includes both the salary and the commission.

Even if it should be held that the salary was payable fortnightly, it is quite clear that the commissions were payable only at the end of the year. Under the circumstances, it seems to us that it cannot be said of the appellant that the "rent" due to him, or his salary and commission together were payable "at terms of less than three months"; and it follows that, having regard to the provisions of article 1657 C.C., and to all the circumstances, this is not a case where the lease of personal services, prolonged as it was by tacit renewal, could be terminated by a notice of less than three months.

For the reasons above stated, the appeal ought to be allowed; and, in the result, the judgment of the Superior Court should be restored with costs here and in the Court of King's Bench.

Appeal allowed with costs.

Solicitors for the appellant: *Brais, Létourneau & Campbell.*

Solicitors for the respondent: *Laverty, Hale & Laverty.*