

1925

BELGIAN INDUSTRIAL CO. v. CANADA CEMENT
CO.

*Nov. 10, 11
*Dec. 10.

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

Contract—Agreement—Sale—Cement—Delivery—Price

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec, reversing the judgment of the Superior Court and maintaining the respondent's action.

The appellant company, whose plant is situated at Shawinigan Falls, is the successor of the Belgo Canadian Pulp and Paper Co. and the alleged liability is a liability of the latter company under a contract it made with the respondent company, a manufacturer of cement. The Belgo Company, in July and August, 1920, agreed to purchase from the respondent company 5,000 barrels of cement. On account of the press of orders at its Montreal plant, the respondent company agreed to deliver this cement from its plant at Exshaw, Alberta, for a price inclusive of freight of \$6.55 per barrel, any increase in the freight rates to be borne by the Belgo Company. Under this contract, certain quantities of cement had been shipped from Exshaw, when, on October 1, 1920, an agreement was arrived at to hold up further shipments from Exshaw. Seventeen cars

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

of cement alleged to have been sent in September from Exshaw were charged to the appellant at Exshaw price. Out of that shipment six cars had previously been shipped in September to a firm in Alberta and refused by it as failing to pass the test of fitness and the same six cars had been re-shipped to the appellant on October 1. The latter, having also refused delivery of these six cars, undertook, on October 12, to pay the Exshaw price on six cars of cement shipped from Montreal to replace those refused, upon the representation by the respondent company that these cars had been shipped before the 1st of October. The Belgo Company paid the Montreal price for these six carloads of cement and the respondent claimed that it should have paid the Exshaw price. The appellant's demand is for payment of the difference between the latter price and the Montreal price, \$4,354.18, forming with interest the sum of \$4,556.67.

The respondent failed in the Superior Court, but obtained judgment for the amount of its claim in the Court of King's Bench, Greenshields and Guerin JJ. dissenting.

On appeal to the Supreme Court of Canada, after hearing counsel on behalf of both parties, the court reserved judgment and, on a subsequent day, allowed the appeal with costs.

Appeal allowed with costs.

Perron K.C. and Genest K.C. for the appellant.

Laurendeau K.C. and Chipman K.C. for the respondent.

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