

*Judgment of the Lords of the Judicial Committee of the Privy Council on the consolidated Appeals of The Western Electric Company v. Francis Xavier Plaunt ; and of Francis Xavier Plaunt v. The Western Electric Company, from the Court of Appeal for Ontario ; delivered the 29th July 1910.*

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PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SHAW.

LORD MERSEY.

DELIVERED BY LORD MACNAGHTEN.

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The action that has given rise to this Appeal was referred for trial to the Local Master of the High Court of Justice at Ottawa. The Master duly made his Report. The Report was approved and confirmed by Latchford, J. The Judgment of that learned Judge was affirmed by the Court of Appeal for Ontario. The High Court and the Court of Appeal agreed entirely in the reasons given by the Master and in the conclusions at which he arrived.

The elaborate and very able argument of Mr. Lafleur has failed to convince their Lordships that there is any error in the Master's Report.

The action was brought to recover damages for breach of a contract for the sale and purchase of telegraph poles.

The principal question was as to the construction of the contract. Was it a contract for the sale of goods which the seller was bound to deliver in strict conformity with the specifications contained in the contract, or was it a contract for the sale of goods which the purchaser was to select from the seller's stock after inspection? It has been held in every Court, so far, that the contract falls within the latter category. Their Lordships are of the same opinion. It follows, therefore, that the decision of this Board in *McArthur Export Company v. Klock* (Quebec L. R. XVII. 356), on which Mr. Lafleur mainly relied, and other cases of that class, have no bearing on the present question. The seller, as the Master observes, "had no way of appropriating specific poles to the contract. All he could do was to tender a sufficient quantity to the Defendant's inspector, and it was only after inspection and acceptance by the latter that the poles were appropriated."

When the meaning of the contract has been ascertained the remaining questions are simply questions of fact. It would serve no useful purpose to review once more the evidence which has already been reviewed on three several occasions and was examined very carefully and in some detail by the learned counsel for the Appellant. It is enough to say that their Lordships agree in the conclusions of the Courts below that the Respondent on his part was ready and willing to perform the contract by furnishing a sufficient supply of telegraph poles for inspection at places designated in the contract, and that the Appellant, by deliberately neglecting or refusing to proceed with the necessary inspection in due time committed a breach of the agreement which justified the Respondent in putting an end to the contract.

Their Lordships are therefore of opinion that the Appeal must be dismissed with costs. For the reasons stated in the Courts below the cross Appeal must meet with the same fate. Their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council.

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THE WESTERN ELECTRIC COMPANY

FRANCIS XAVIER PLAUNT;

AND

FRANCIS XAVIER PLAUNT

vs.

THE WESTERN ELECTRIC COMPANY.

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