

upon, he shall pay by way of liquidated damages \$1 per day thereafter that the works shall remain incomplete; due allowance to be made for extension of time for additional work or alterations and for delay occasioned by the default of the contractor for other parts of the work, unless the proprietor has proceeded promptly against such other contractor."

It appeared that the carpenter's work was not done upon the roof till the 3rd August, and that the slating and tiling part of the work could not be commenced before the expiration of the time-limit fixed in the contract, which was the 1st August.

The cases shew that the penalty clause (i.e., the \$1 per day) is at an end when the contract-limit expires—it is for the specific period only. If the contractor is so delayed by the default of the proprietor or his workmen that he is unable to begin his work till a date after the termination of the time fixed by the contract . . . his delay in the after-prosecution of the work is not to be visited by the imposition of the penalty of so much a day. There is, in effect, a new contract for the performance of the work at the contract price, but without any revival of the penalty clause. On delay in this after-prosecution of the work the contractor may be liable, but only on proof of damage sustained thereby. . . . Moore v. Hamilton, 33 U. C. R. 279, 520; . . . Holme v. Guppy, 3 M. & W. 387; . . . Dodd v. Charles, [1897] 1 K. B.

It is right, however, to send the case back, allowing proper amendments, to have the matter of damage for delay in the prosecution of the work ascertained upon proper evidence, as suggested in *Hamilton v. Moore*, at p. 520.

Costs of appeal to the plaintiff; other costs of action to be disposed of by Judge Monck, to whom the parties agree to have the reference.

CLUTE, J.

JANUARY 24TH, 1910.

RE NUTTER BREWERY LIMITED.

Company—Winding-up — Contributories — Dominion Companies Act—Application for Shares—Condition — Non-fulfilment—Absence of Allotment and Notice—Necessity for By-law—Constitution of Board of Directors.

Appeal by the liquidator of the company from the refusal of the local Master at Cornwall to place John Henry Bryant and George Sorgius on the list of contributories in a winding-up of the company.