

1851
FURNISS

CITY OF TORONTO v. FURNISS.

MR. HAGARTY'S LETTER TO P. M. VANKOUGHNET, ESQ.

Toronto, Feb. 5, 1851.

DEAR SIR,—I am desirous of calling your attention, and that of your clients, to the matters in dispute in this action, now standing adjourned to the spring assizes.

With a view to any permanent settlement, it is necessary to look beyond the result of a trial; as the verdict of a jury for either party will hardly effect the desired end, viz., a satisfactory arrangement of the question at issue between the Water Works Company and the Corporation.

I will not enter into any detail of the various negotiations that for several years appear to have taken place between the parties, and I especially desire to avoid any reference to points of difference in which unpleasant feelings or harsh language may have arisen or been employed. I wish to call your clients' attention to two points, incapable, I believe, of being disputed. First, that for a long time past, Mr. Furniss has urged on the corporation the advisability of having the water works examined and reported on by competent and scientific engineers, with a view to their alleged defects being thoroughly ascertained. Secondly, that no such examination has as yet taken place.

Not to go far back into the correspondence of the last few years, I refer you especially to Mr. Furniss' communications of 28th November and 16th December last, addressed to the corporation; also to the note addressed to the same body by Messrs. Berczy, Atkinson and Harris, gentlemen of known character and standing, who were fully authorised by Mr. Furniss to treat with the corporation, and to make any just and reasonable settlement of this dispute.

The offers already made by Mr. Furniss, I now in his behalf repeat. I am prepared to meet any reasonable proposition for a final arrangement. The works must sooner or later be examined by competent scientific engineers; and I would respectfully suggest to the consideration of your clients, whether it would not be calculated to lead to some definite arrangement if such an examination were had with their sanction, by parties in whom they as well as my client would repose confidence; and whether the adoption of such suggestions of improvement and extension of the water works, on such rational terms as such referees would suggest, will not be calculated to meet what I presume is the only object of the City Council—the providing a supply of water commensurate with the public necessities and convenience of this rapidly increasing city.

The gentlemen already named by Mr. Furniss are also prepared to confer with the city authorities as to the most advisable course to be adopted in arranging the terms and means of settlement. As Mr. Furniss' legal adviser, I can assure you of my readiness to aid in every possible way in forwarding the desired adjustment.

I do not expect that the city should abandon any of its legal rights, acquired by contract or otherwise; but I desire, before appearing in court to answer their suit, to be satisfied that we have exhausted all available means of effecting what a trial-at-law can hardly obtain, viz., a permanent adjustment of a serious and complicated dispute—the continuance of which is admitted on all sides to be deeply injurious to the interests of the inhabitants of Toronto.

Either some settlement must take place, or things will have to continue, for an indefinite period, in their present very unsatisfactory state.

It will hardly be for the interests of the public, or in furtherance of the objects originally contemplated by the establishment of the works, that the Water Company and the Corporation should be for any considerable time in direct opposition or litigation. The establishment of a new company for the supply of water would be an event (if practicable) which would hardly afford much promise of removing all the objections urged to the present works. For some time to come, to say nothing of existing contracts, Toronto would hardly render very profitable the exertions of two rival companies, whose opposition might possibly be only regulated by the extent of their respective resources.

In every aspect of the case—and I have striven to view it less in the spirit of an advocate than that of an inhabitant of Toronto deeply interested in the solution of these difficulties—I cannot see how a satisfactory or permanent settlement of this dispute can ever be arrived at, except by the adoption of some course such as is above suggested.

If the Corporation will meet the proposal in a similar spirit to that in which it is made, I shall be sanguine of a speedy settlement, as we shall be ready to entertain any proposition on their behalf calculated to effect the same object.

As you will observe, I have not touched upon the details or points of the dispute, nor entered into any discussion as to the party who may be in the right or in fault. I have merely assumed the existence of differences, and expressed Mr. Furniss' anxiety to adopt any rational course to meet the objections advanced, and to guard against their recurrence.

I shall be obliged by your bringing this communication under the notice of the City Corporation, with a view to our learning as soon as possible whether it will be practicable to settle existing differences in a way likely to prevent future disputes on the same subject.

It is obvious that if an amicable arrangement be resolved on, as little delay as possible should be allowed to take place.

I remain,

(Signed) Yours very truly,
JOHN H. HAGARTY.