

May, 1877, your petitioner made with the Department of Marine and Fisheries a temporary and provisional arrangement, under which your petitioner should be paid \$1,000 a month for current expenses while in Halifax, leaving the final settlement of fees and expenses to be arranged after the closing of the Commission." On the other hand, it is alleged in the defence filed for the appellant:—"That the arrangement made with the suppliant referred to in his petition, under which he was to be paid \$1,000 a month while in Halifax, was not a temporary and provisional arrangement as alleged, but that the \$1,000 a month, was, with other moneys previously paid to the suppliant, to be accepted by him in full for his services and expenses." The Commission met at Halifax on the 16th of June, and brought its labours to a close on the 23d of November, 1877, having sat, with occasional adjournments, for a period of five months and seven days. In addition to the retaining fee already mentioned, the respondent received a "refresher" of \$1,000, and also six monthly payments of \$1,000 each during the sitting of the Commission, making a sum total of \$8,000. According to the respondent, these sums were paid to him to account of his remuneration, the precise amount of his fees and expenses being left for adjustment subsequently. According to the appellant, they were paid to and received by the respondent as in full of his whole claim for fees and expenses. Both parties are agreed that in May, 1877, it was arranged that those sums (to the extent of \$7,000) should be paid to the respondent, but they differ as to the footing upon which they were to be paid. Being of opinion that by the terms of his employment in 1875, the respondent was entitled to a *quantum meruit* in respect of the services which might be required of him, their lordships think that it lies with the appellant to make out that the respondent's original right to remuneration was varied by subsequent agreement, and they have also come to the conclusion that the appellant has failed to establish the existence of such an agreement. The evidence upon this point, which need not be referred to in detail, is very unsatisfactory. It is abundantly plain that the impression honestly

derived by Sir A. Smith from his interviews with the respondent in May, 1877, was that the respondent had agreed to accept a refresher of \$1,000, and a payment of the same amount monthly during the sittings of the Commission, as in full of all claims for remuneration. But in order to alter the then existing rights of the respondent, it is not enough for the appellant to show that such was the impression created in the mind of Sir A. Smith; he must also prove that the terms of the arrangement, as understood by Sir A. Smith, were understood in the same sense and were assented to by the respondent. But the respondent swears distinctly that he understood and believed the arrangement to be provisional merely; that its object was to fix the sums which were to be paid him to account, leaving the balance payable to him for after-adjustment, and there are circumstances proved in the case which seem to establish beyond question that the respondent at the time sincerely entertained that belief. Then the evidence of Mr. Whit-cher, the Commissioner of Fisheries for Canada, and the only third party present at these interviews, is not only very inconclusive, but what he does state, as to the language actually used by the principal parties to the arrangement then made, tends to support the respondent's understanding of its terms. In that state of the evidence, their lordships are unable to hold that the appellant has satisfied the *onus* incumbent on him of proving the new arrangement alleged in his defence. In the courts below, while the learned judges were equally divided as to the result of the case, there was a remarkable diversity of judicial opinion in regard to the law applicable to its decision. The cause was tried before Mr. Justice Fournier, who, on the 12th of January, 1881, gave judgment in favour of the respondent, and fixed the amount of fees and expenses still remaining due to him in remuneration of his services at \$8,000, and it is not maintained that the amount awarded by the learned judge is excessive, if the respondent has a right of action, and that right is not barred by the alleged arrangement of May, 1877. The cause was then taken by appeal before the Supreme Court of Canada, who gave their