

H. Guthrie, K.C., for the plaintiffs.

R. L. McKinnon, for the defendants.

HON. SIR JOHN BOYD, C.:—The written agreement contains promises by the Jules Motor Company to do a number of things, and the breach of the contract as to any of these gives rise to an appropriate action for relief. Then the company failed to make payment of the first instalment of purchase money, and the city of Guelph could sue to recover that, and not insist on a revocation of the whole under the special power conferred by the agreement. The company also failed to keep up and maintain in the manufacturing establishment purchased from the city, an adequate quantity and value of plant as provided for by the contract. This term was secured and guaranteed by the bond of the fidelity company; and it is open to the city to sue for the breach of this contract, independently of the other. The mere fact that the city determined to put an end to the purchase under clause 14 of the agreement and regain possession of the premises, and gave notice to this effect after this action was begun, does not interfere with the right to recover damages for breach of the bond or disqualify the city from seeking that method of relief from the Court in addition to the other method of relief as to the property provided for in the mutual written agreement. The one does in no way conflict with the other; the termination of the contract as to the land does not discharge the vested right of action for damages on the bond against the principal and the surety. These two terms of the contract are severable and the principal debtor has not attempted to defend, but lets the claim go by default.

The 14th paragraph of the contract provides that the effect of giving notice to terminate the agreement in 30 days declares that thereupon all rights and interests thereby created or then existing in favour of the company shall cease and terminate; but it does not follow that all right and interest in favour of the city of Guelph, *e.g.*, as to damages for breach shall also end.

The other defences raised I practically disposed of at the hearing. The application to amend by setting up that the bond was not executed by the Jules Motor should not be entertained in view of the admission on the record, that it