

There should, therefore, be judgment for the plaintiff permanently restraining the defendants and the council from rescinding the resolution of the council of the 25th May, 1920, or the recommendation of the property committee approving of the application for a permit to erect a dry-cleaning plant upon the premises in rear of Pendrith street. The defendants should pay the plaintiff's costs.

LENNOX, J.

JANUARY 12TH, 1920.

ALLEN v. ST. LEGER.

*Sale of Goods—Action for Price—Credits—Contract—Interest—Delay in Payment—Judicature Act, sec. 35 (2)—Trade Discounts—Exchange Charges—Contract with Foreign Vendors—Payment in Canadian Money—Question of Fact—Payment of Money into Court—Costs.*

Action to recover \$3,888.61 and interest for goods sold and delivered by the plaintiffs to the defendants.

The action was tried without a jury at a Toronto sittings.

J. P. MacGregor, for the plaintiffs.

T. J. Agar, for the defendants.

LENNOX, J., in a written judgment, said that the matters in dispute, in addition to a \$910 payment not credited by the plaintiffs in the endorsement of the writ of summons, but now admitted, were: (1) trade discounts; (2) exchange charges; and (3) interest.

As to interest, the learned Judge said that, if the plaintiffs were entitled, it must be by way of damages for breach of contract. It was said, by one McCafferty, a witness at the trial, that the legal rate in Massachusetts (where the plaintiffs carried on business) was 6 per cent.; but he was not a competent witness to prove the law of that State; and, in the absence of proof, it was proper to infer that the rate there did not exceed the rate in Canada. In the part of the contract which was in writing there was nothing about interest, and interest had never been paid or demanded. The first reference to interest was in the endorsement on the writ of summons. There was no interest included in the sum claimed in the plaintiffs' solicitors' letter of the 26th July, 1920; and the case was not brought within the terms of sec. 35 (2) of the Judicature Act, R.S.O. 1914 ch. 56. Interest should be computed from the date of the writ of summons only, and at the rate of 5 per cent. per annum.