

of the Council subscribed the stock on the following, among other, conditions:—(1.) The amount should be payable in debentures of \$100 each, payable in 25 years. (2.) The subscription was only exigible as the work progressed, not to exceed 50 per cent. of the value of the work done, payments to be made monthly, as the work progressed, on the certificate of the Company's engineer. The plaintiffs further alleged that, conformably to the by-law, they commenced the works, and in March, 1875, had constructed to the value of more than \$300,000 on a length of fifty miles in the County of Ottawa; that this gave the Company the right to claim \$150,000 payable in debentures; that the plaintiffs were ready to terminate the works on condition that the defendants should fulfil the conditions of the by-law; that the defendants failed to pay to plaintiffs said debentures, and caused damage to plaintiffs, by shaking their credit and depriving them of considerable sums of money, which the plaintiffs would have had a right to, as well from the city of Montreal as from the Quebec Government. Damages were under these circumstances claimed.

The defence was to the effect that the defendants were not bound to deliver the debentures until the conditions were duly executed; that among the conditions was one that the road should be completed and in running order on 1st December, 1875; that the road could not be completed within that time, and that the plaintiffs were utterly insolvent; that the only claim the plaintiffs could legally make was for the issuing of the debentures or their value in money. There were some other points of lesser importance raised.

The Court below was of opinion that although as a general rule, in obligations limited to the payment of a sum of money, damages arising from delay in their fulfilment consist in a condemnation to pay interest, yet there may be cases in which the creditor is entitled to damages other than interest. There may be other causes of damage besides simple delay, and these fall under the general rule which allows the Court to assess the amount of damage according to the loss really sustained by the claimant. The Court accordingly allowed \$100 damages for default of defendants.

For the appellants it was contended that the obligation was to pay a sum of money, and there could not be other damages than the interest thereon. It was also submitted that the plaintiffs were completely disinterested, the Provincial Government of Quebec having acquired the road and all the right, title, and interest of the plaintiffs. Moreover there was no proof of damage.

For the respondents it was urged that the appellants were in a great measure responsible for the financial difficulties which had crushed the company in the autumn of 1875. The withholding by appellants of the amount due

by them led other corporations to withhold their subventions, and it was submitted that these damages were not too remote to be taken into account. The authorities sustained a right of action for damages apart from mere interest, and the amount which had been awarded by the Court below was the smallest sum that could be assessed.

RAMSAY, J. This appeal gives rise to a question of some interest and some novelty. The County of Ottawa agreed to take 200 shares in the stock of the company respondent, and to pay for them by debentures bearing interest at six per cent, on certain conditions. These conditions were complied with, but the company on demand refused to deliver the debentures.

This appears to have deranged the affairs of the company respondent and to have done the respondent great damage. The respondent sued the appellant in damages, and was met by a demurrer taking up the ground that this was an undertaking to pay money, and that the only damage for the delay in the payment of money was interest at the legal rate.

The demurrer was dismissed, we are not told why, but I think there is no difficulty in suggesting more than one good reason for its dismissal.

The whole question came up on the merits, and the learned Judge in the Court below awarded the respondent \$100 damages. In doing so he adopted a principle which was insisted on by the learned counsel for the respondent before this Court, and which he supported by a very respectable array of authority. It is this; that article 1077 C. C. only provides that the damages for the delay in the payment of money "consist only of interest," etc., "*ne consistent que dans l'intérêt*"—and that therefore there may be other damages for the non-payment of money. It is said this article is borrowed from Art. 1153, C. N., and that the writers under this article in France have held that there may be other damages than interest where money has not been paid. It is proper to remark that the *redaction* of 1153 C. N. is very different from that of Art. 1077 C. C. Art. 1153 is in these words: "*Dans les obligations qui se bornent au paiement d'une certaine somme, les dommages et intérêts, résultant du retard dans l'exécution, ne consistent jamais que dans la condamnation aux intérêts fixés par la loi.*"

I do not however attach much importance to this difference of *redaction*. It seems to me to establish a distinction almost inappreciable, and one which it is evident the codification commissioners did not see. They say, p. 18, 1st Rep. "The section intitled 'Of damages' resulting from the inexecution of obligations, contains articles numbered from 90 (96) to 98 (103), which, with some changes of expression and a difference of arrangement, embody the rules contained in the articles of the French Code,