

h'town Milling Co. vs Fairbanks Morse Co. Ltd.

Monday, Feb. 6th. In the Supreme Court, yesterday morning the case of the Charlotte Milling Co. vs. the Canadian Fairbanks Morse Co. Ltd. began before Mr. Justice Hazzard and the following jury: George M. Campbell, Foreman Joseph A. Hughes, Patrick McKenna, Jerome McGuigan, Angus M. Bolton, Charles E. Rowe and Joseph Brazil.

In the case the plaintiffs are suing the defendants for \$25,000 damages for alleged breach of contract. Attorney General Johnston, K. C. and W. E. Bentley, K. C., are counsel for plaintiffs, G. S. Inman, K. C., J. D. Stewart, K. C., and J. D. P. Lewis, of St. John are counsel for the defendants.

Mr. Inman asked His Lordship that Mr. Lewis a member of the New Brunswick bar be permitted to act on this case in this court. The court granted permission.

Mr. Inman moved that the plaintiffs of the Milling Company be inspected by the witnesses. Mr. Johnson suggested that the jury and counsel also be included. His Lordship granted permission and the court adjourned till 2 p.m. to enable the inspection to be made in the meantime.

This Lordship suggested that as this case was likely to last two weeks an additional stenographer be secured. Mr. Bentley, opening the case of the plaintiff at the afternoon session, said that Mr. Morley, president of the Fairbanks-Morse Co., had set forth a number of local business men an alluring prospect for manufacturing flour at a good profit which could be started with two mills, with the prospect of gradually enlarging the plant. Mr. Morley painted the prospect in rosy colors and brought into the court showing that 4-12 bushels of clean, dry wheat could produce a barrel of flour in the mills he was selling; and in February, 1920, he submitted his proposal to install two mills with a capacity of 100 barrels in 24 hours at a cost of about \$15,000. Each mill to be operated on not more than 15 horse power.

This proposal was gladly accepted by the local men and it was arranged that the Fairbanks-Morse Company send a man down to inspect the machinery. This man arrived in accordance with instructions to accommodate the two mills willing operations begin in November, 1920, and continued for about two or three weeks. Flour was turned out under Mr. Morley's supervision, the wheat being bought under his directions to produce first class quality. Before he left Mr. Morley produced some flour which looked all right. He then told the local men he had made a quantity and quality test and that the mills had produced a barrel of flour from the wheat. He then returned to the directors of the company and reported that the work was satisfactory.

Mr. Inman objected to the reading of any evidence (such as the letter), at this stage of the case. Mr. Bentley maintained a letter to arrive at an understanding of the issue involved. The court allowed that the substance of the letter be given.

Mr. Bentley, continuing, explained that Mr. B. W. LePage at Mr. Morley's request gave him a letter dated Nov. 19, 1919, to the effect that the mill was duly installed and that

"FLU" NEARLY KILLED HER "I was so weak that I had lost interest in everything."

Because Mrs. McGregor felt herself becoming run down, read what happened. "Like a great many other people who got the 'flu' in a weakened, run down condition. Nothing seemed to bring back my old strength and energy. I was tired all the time. I had no appetite. I had chills pain all over my body. I was despondent and took no interest in anything. I was nervous. I was irritable and was always looking for slights. I was losing weight. I was in such a nervous, weakened, run down condition, that I was getting pneumonia. My family didn't think I would live and the doctor told me afterwards that it was only because I had a strong heart that I managed to pull through. By the time I was out of danger, I was so weak and tired that I had lost interest in everything. I tried several preparations to build me up but none of them did me any good. One day a friend who had been very ill called in to see me and showed me what she had been doing with Cascarets. I decided to follow her advice. Today I think Carnol the most wonderful preparation in the world. It has made me a happy, healthy, contented woman."

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mills was fully discussed. Mr. Morley represented himself to be an expert on flour and guaranteed his mills to produce a barrel of flour equal to Robin Hood or any high grade flour, from 4-12 bushels of clean, dry wheat. This could be produced he said out of 50 per cent No. 1 Northern wheat, 50 per cent Ontario wheat. The local men were skeptical about being able to compete with any of the first-class mills but Mr. Morley said: "Don't worry about quality of flour; these mills can produce a flour that will compete with any of the Western mills in quantity and quality." Mr. Morley later submitted a prospective witness copy submitted in evidence.

Mr. Inman and Mr. Lewis took objection to the introduction of an unsigned typewritten document in evidence but it was allowed by the court. This statement guaranteed quality of flour which would be produced by the mills which would compete with Robin Hood and estimated a profit of \$10,350 a year for one unit or mill.

This prospectus was submitted at a second meeting in Mr. Morley's room at the Victoria Hotel. Mr. Howatt and his son, Messrs. Chandler, Davidson, Carter and others, besides witnesses were present. Mr. Morley repeated his statement that there would be no difficulty in producing a barrel of flour equal to Robin Hood or any high grade flour out of 4-12 bushels of wheat. He stated that Mr. Powell, St. John, was producing flour with his mills which were exactly similar to the ones he was selling. He gave his personal guarantee to this and offered to put this statement into the contract. He outlined what kind of a building was required. The Fairbanks-Morse Company, setting forth the trouble they were experiencing stating that the mill had been obliged to close down and relying upon the company to do something in the way of reparation. The Fairbanks-Morse Company replied that Mr. Morley had suggested that Mr. Wesley Thompson visit the Milling Company to straighten out affairs. On 5th of April the Milling Company continued, stating the seriousness of the situation and commenting on the Fairbanks-Morse Company's failure to reply.

Mr. Inman again objected to opposing counsel's reading from letters until they had been proven as evidence. The court allowed that it was not desirable to read "in extenuation" from correspondence was to be submitted later as evidence. The contents might be stated briefly.

Mr. Bentley maintained his former argument. The local millers, he further, stated in their letter that Mr. Morley had assured them of success, and referred to the specific agreement he had entered into. He had been allowed to go on under the understanding that he would return, which he did not do. Mr. Powell, St. John, paid a barrel of flour from 4-12 bushels of wheat until he had extended his plan. This letter was replied to, the Fairbanks-Morse Company stating that as the Charlotte Milling Company had accepted the mill, it did not propose doing anything further. They offered to send Mr. Thompson to Charlottetown, provided the local company would pay him \$10 a day and all his expenses. The local men agreed to this provided that Mr. Thompson would show that the Charlotte Milling Company was doing as proposed. If he could not do this they would not feel themselves bound to pay anything. In this the Fairbanks-Morse Company seemed to agree and Mr. Thompson arrived and tested the mills.

The Fairbanks-Morse Company in their letter said that Mr. Morley meant by "standard" flour the Government War Standard flour, which did not necessarily mean high grade flour at all. In May Mr. Thompson arrived and inspected the mill. He said the mills would not make the flour as specified.

Mr. Inman submitted that it was a question of law whether Mr. Thompson was or was not an agent of the Company. Mr. Bentley continuing, said Mr. Thompson made certain alterations in the mills. He got the highest quality of flour produced in Northern Ontario doing his best, made a test which showed that he could not make a barrel of flour with less than 4 bushels and 42 lbs. of the very best wheat procurable. He assured the local millers that he could not get it down to the specified amount.

A meeting was called in May at Charlottetown and Mr. Thompson reported to the representatives of the Fairbanks-Morse Company. Mr. Hill the Maritime Agent, said he would send Mr. Morley down promptly. He meant the local company had made the considerable wheat on their hands and they notified the Fairbanks-Morse Company that they would make this into flour so as to minimize the loss as much as possible. This was done by the mills re-milled the practically new flour, February 1921, up to the present time. Several letters sent to the Fairbanks-Morse Company were not replied to, and the local company felt themselves called upon to bring suit for damages.

Mr. B. W. LePage was the first witness called for the plaintiff. As a general merchant he had handled flour before going into the boot and shoe business in Charlottetown. He was associated with Col. Davidson, Messrs. Chandler, Harold Jenkins, Isaac Carter, Bradford Howatt and others in an enterprise for the manufacture of flour. He met Mr. Morley of the Canadian Fairbanks-Morse Company, in January, 1920, in his shoe store. Mr. Morley said he was selling Marble flour mills and that he was trying to interest business men in Charlottetown in purchase one or more of the mills and invited witness to attend a meeting at Victoria Hotel, Messrs. D. B. Howatt, Tiffet Howatt, Col. Davidson, Mr. Morley and witness were present at this meeting when the question of purchasing the

mill was fully discussed. Mr. Morley represented himself to be an expert on flour and guaranteed his mills to produce a barrel of flour equal to Robin Hood or any high grade flour, from 4-12 bushels of clean, dry wheat. This could be produced he said out of 50 per cent No. 1 Northern wheat, 50 per cent Ontario wheat. The local men were skeptical about being able to compete with any of the first-class mills but Mr. Morley said: "Don't worry about quality of flour; these mills can produce a flour that will compete with any of the Western mills in quantity and quality." Mr. Morley later submitted a prospective witness copy submitted in evidence.

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NEW POPE MAY ABANDON PAPAL CLOISTERATION

(Continued From Page 9.)

The correspondent sought the solicitor and had a short talk with him. "Achille and myself," he said "were chums. I could tell you a lot about our games and escapades. Since the new Pope had been elected, I have been in the mountains, and I assure you it would be difficult to say which he loves the most. At the age of 10 we used to go on excursions over the hills, and he distinguished himself by his ability and endurance.

Mountain Feats "From our hills he turned then to the Alps and became a great mountaineer. Of his climbs, three are particularly important. Cervin (Matterhorn), Mont Blanc and Mont Rosa. He was the first to reach the summit of Mont Blanc from the Italian side, and the road which he was the first to traverse is still known by his name and that of Monsignor Grassilli, his companion. He was the first to cross the summit of Mont Rosa and his ascent is described in a bulletin of the Italian Alpine Club, of which he was a member.

"We were often together on these excursions and I never saw a more enthusiastic climber. He constantly carried his prayer book with him, and would occasionally read and read a few sentences from it. "What was the most extraordinary feat he performed, I can't say, but I remember one on the glacier Paradiso, our guide fell into a crevasse and would have perished there had it not been for the presence of my skill and strength with which Ratti held the ropes. Then, little by little he succeeded in drawing the guide back to safety.

"Even at the age of fifty he made some good climbs, but then went to Rome, far away from his beloved Alps. I remember when he left Milan in 1912. I told him: 'You will return with a red hat, and in time will arrive at the white hat.' His reply was: 'This is a tremendous prophecy.'

Returning to Milan, the correspondent called on Signora Camilla, a woman of about fifty. She is the Pope's private secretary in Milan at a modest flat. She is in tears. "I am pleased," she said to the correspondent, "at the great honor bestowed on my family, but I am sorry to lose a brother who was all ways good and kind to me. I am afraid I shall see him very little now."

It was happy when he returned to Milan as cardinal, but the happiness was to last only five months during which time I had the opportunity of seeing him almost every day.

Asked what her brother told her when he was leaving for the conclave she replied: "My brother is a very reserved man; he does not like talking about himself. He told me, however, that he hoped he would return to his beloved Milan."

Travelled in England LONDON, Feb. 10.—That an Italian should be elected Pope is regarded here as almost inevitable, since it was recognized that a foreign Pope would be likely to increase the difficulties between the Vatican and the Italian government.

It is believed that the new Pope will be welcomed in France. He is very conversant with the French language and was Paul Naudon in Warsaw from 1918 until early last year, a diplomatic post of the highest importance. His Warsaw newspaper might be regarded as stamped on his mind. During the last few years, however, supporters of his candidature have canvassed the German and Austrian cardinals, pointing out that this is by no means the case and giving in proof certain instances of his activity.

Among such instances might have been mentioned the veto issued by the Vatican during the Franco-German excitement in Upper Silesia of the use of the pulpit for pro-Polish propaganda. At any rate, it would be rash to assume that he would prove an anti-German Pope. While there exists a feeling against making the papacy an Italian monopoly, especially since the coming into being of an officially recognized and directed Catholic Party in Italy, the opinion is that the new Pope will undoubtedly continue the work of peace and reconciliation at home and abroad of his predecessor.

Pope Pius XI is one of the very few modern popes who have travelled in England. In 1909 he visited Manchester to see the work of the convent similar to that in Milan of which he was chaplain. Dr. Casanovi, Bishop of Salerno, who is a personal friend of the new Pope said today: "Pope Pius XI was a great Alpine climber in his younger days and he has made some remarkable ascents of the most difficult peaks in the Alps. He is a great scholar and diplomat and when in charge of

of the convent in Milan was never more happy than when he was with the poorest of children, particularly boy chimney sweeps.

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Sunday School Lesson

ELISHA AND THE SHUNAMITE WOMAN Sunday School Lesson for Feb. 12, 1922. (2 Kings 4: 8-37)

Golden Text—Verily, verily, I say unto you, the hour cometh and now is, when the dead shall hear the voice of the Son of God and they that hear shall live.—John 5: 25.

There were three great miracle workers—Moses and Elijah and Elisha. God hurried Moses in an hour and the Devil had a dispute with the Archangel Michael over his body. (Gen. 3: 9.) Elisha needed no grave for he, like Jesus, ascended visibly into the sky. His natural body was not his, but transformed instantly into a spiritual body.

Both in the Hebrew of the Old Testament and in the Greek of the New Testament the same word may mean either spirit or wind or breath, either in the minds of the people the spirit which animates the body was identified with the breath which is the physical source and evidence of life.

Quite a number of cases of dead persons coming to life again are mentioned in the Bible. Samuel was the first, the son of the widow of Zarephath was the second then the man who was buried in Elisha's grave. (See 1 Sam. 28, 1-19; 2 Kings 13, 21.) Jesus raised Lazarus and the daughter of Jairus and the son of the widow of Nain; Peter raised Dorcas and Paul raised Eutychus and many unnamed persons rose from their graves after the resurrection of Christ. (See R. V.) and appeared unto many. (John 11: 42-45; Mark 5: 41-42; Mat. 27: 50-53; Luke 7: 15; Acts 20: 9-10.) Moses and Elijah also came to life again on the Mount of Transfiguration. (Mark 9: 1-4.)

All these resurrections, although merely temporary, illustrate the truth that death is not the end of life but the resurrection of Jesus is the supreme proof that we also shall live again. There is no record of what any of the other persons who were restored to life did or said afterwards, except in the cases of Samuel and of Moses and Elijah and those cases were altogether exceptional. But we know

that Jesus showed Himself alive to His disciples during forty days after His resurrection; not to all the people, but to witnesses chosen before by God. And we know a good deal about the circumstances in which He showed Himself to His friends and about what He said to them during these forty days. We know, too, that it was not as a mere phantom that He showed Himself to them for He ate and drank with them and showed them the wounds in His hands and feet to convince them that He was present with them again in flesh and blood. (Luke 24: 39-43; Acts 10: 40-41.)

The resurrection of Jesus is the supreme miracle of the Bible and is proved by incontestable evidence. It is God's endorsement of His Son and God's guarantee that we, too, shall rise again. (1 Cor 15: 12-23.)

Cardinal Gibbons, the former head of the Catholic church in America, was one of the most demagogic men in the country. He also enjoyed a good joke, even when told at his own expense. He once related how a Baltimore newspaperman who may have been more zealous in journalism than learned in religion called at the Cardinal's house one day to ask his eminent superior for information concerning church matters.

"The Cardinal is cut of the cloth," said Father Fletcher, who received the caller. "He may as well say 'I see Mrs. Gibbons' was the startling request that followed.

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