

1917
June 26.

IN THE MATTER OF THE PETITION OF RIGHT OF
THE GULF PULP & PAPER COMPANY, A BODY
CORPORATE,
SUPPLIANTS,
AND
HIS MAJESTY THE KING RESPONDENT.

Contract—Hire of horses—Military officer—Liability of Crown.

A contract for the hire of horses entered into by an officer of the Crown's military forces acting under the authority of the commanding officer is binding upon the Crown.

PETITION OF RIGHT to recover for the loss of horses hired by a military officer.

Tried before the Honourable Mr. Justice Audette, at Quebec, June 21, 1917.

A Fitzpatrick, K.C., for suppliant.

G. F. Gibsone, K.C., for respondent.

AUDETTE, J. (June 26, 1917) delivered judgment.

The suppliants, by their petition of right, seek to recover the sum of \$850 for the hire of a team of horses, damages, and for the loss of the horses.

In the month of August, 1914, after the declaration of war by Germany, Sergeant-Major Moisan, of the 7th Field Ambulance, came to the suppliants' office and hired a heavy team of horses, which was delivered at the Drill Hall to said Sergeant-Major at 8 o'clock, on the evening of August 21st, 1914, by witness Paquet, who received from the Sergeant-Major the receipt for the same, Exhibit No. 1.

After taking delivery of the team, witness Paquet helped the Sergeant-Major to at once hitch the horses on an ambulance waggon to go down to Beaumont, to the Martiniere Battery, where Captain Delage, who was in charge, was stationed. The Captain saw the horses several times, and he says they were the best horses they had.

Without entering into full details, it will perhaps be sufficient to say that when the rent for the hiring of these horses was sought, they could not be found and they seem to have disappeared.

The name and description of these horses, as well as the name of their owners, are not on an official list, which was long after prepared, as best it could be done, because Major Lagueux said, although he repeatedly asked for information with respect to the horses from Major Wright, who had been in command of a section of the 7th Division at Levis before him, he never could get an answer.

Some horses, to the knowledge of Major Lagueux, were omitted from this official list. This list is more or less reliable.

However, I must find that this team of horses was actually delivered, on behalf of the suppliants, to Sergeant-Major Moisan, who on that same evening had them hitched to a military ambulance waggon. The horses were actually delivered and accepted, as attested by the receipt. Sergeant-Major Moisan went to the front either in August or September, 1914, and is now in France.

The evidence further disclosed that the Commanding Officer, in presence of Captain Delage, authorized Sergeant-Major Moisan to procure the necessary horses for the use of the 7th Ambulance Division.

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War at that time had been declared. Sergeant-Major Moisan was in active service, acting under the authority of his Commanding Officer. It is therefore obvious that it must be taken he had then the proper authority to hire these horses, and, moreover, that the Crown, through him, took delivery of the same.

If, as is contended, these horses were afterward converted to the use of someone else, the suppliants herein have nothing to do with it. After delivery it was not the suppliants' duty to see that the horses were not stolen. They were delivered to the Crown.

If the Crown did not get much benefit out of the horses, it is not the suppliants' fault. *The Queen v. Henderson.*¹ The horses had been hired in the regular manner, no other provision having been made for procuring them. They have been delivered and used by the Crown, and therefore the Crown must be taken to have ratified what in this respect its officers and agents had done. *Henderson v. The Queen.*²

The Crown has paid no rent to the suppliants and the horses have apparently been lost—they are therefore entitled to recover for the breach of the contract under the decision of the case of the *Windsor & Annapolis Ry. Co. v. The Queen.*³

I am not satisfied with the evidence respecting damages, but I think the suppliant should get the value of these two horses, which I hereby fix at the sum of \$450. In lieu of their rent and damages, there will be interest upon this sum from August 21st, 1914, the date of the delivery of the team to the

¹ 28 Can. S.C.R. 433.

² 6 Can. Ex. 48.

³ 11 App. Cas. 607.

Crown. *Johnson v. The Queen*;¹ *Henderson v. The Queen*;² *Wood v. The Queen*;³ and *Hall v. The Queen*.⁴

Therefore, judgment will be entered declaring that the suppliant is entitled to recover from the respondent the sum of \$450, with interest thereon at 5 per cent. per annum, from August 21st, 1914, and costs.

Judgment for suppliant.

Solicitors for suppliant: *Fitzpatrick, Dupré & Gagnon.*

Solicitors for respondent: *Gibson & Dobell.*

¹ 8 Can. Ex. 360.

² 6 Can. Ex. 39; 28 Can. S.C.R. 425.

³ 7 Can. S.C.R. 634, 639.

⁴ 3 Can. Ex. 373.

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