

1891  
 Jan. 21.  
 ROBERT B. HUMPHREY.....SUPPLIANT ;  
 AND  
 HER MAJESTY THE QUEEN.....RESPONDENT.

*Contract to carry mails—Breach of—Estoppel.*

The doctrine of estoppel cannot be invoked against the crown.

**P**ETITION OF RIGHT for an alleged breach by the Crown of a contract for the conveyance of Her Majesty's mails between St. John, N. B., and Digby and Annapolis, N. S.

The contract relied upon by the suppliant was alleged to have been entered into, on the 30th October, 1888, between the suppliant and the Postmaster-General of Canada, under which the suppliant contended he was entitled to carry the said mails for a period of nine months on terms as to payment similar to those contained in the contract then about expiring for the same service, and subject to the usual right of cancellation of such contracts,—that is, on receiving from the Postmaster-General six months' notice of his intention to cancel.

The facts leading up to the alleged contract are as follows: On the 30th October, 1888, the regular contract for the conveyance of the said mails was about to expire on the following day, 31st October, 1888, and the Postmaster-General was anxious to continue the service temporarily until a new permanent contract could be entered into for such service. Tenders for permanent service had been advertised for and a number of tenders had been received by the Post Office Department, amongst which was the suppliant's tender, but none of them had been accepted. The suppliant, with a view to urging his claims to the contract for which he had tendered,

had an interview with the Postmaster-General when a conversation took place between them in which the Postmaster-General offered him the temporary conveyance of the said mails, which was to continue only until a permanent contract could be arranged therefor.

As the suppliant had been understood during the said conversation to be willing to accept the temporary performance of the duties, he was requested to put his proposition for such service in writing, and on the same day, the 30th October, 1888, he addressed the following letter to the Postmaster-General :—

“ OTTAWA, Ont., 30th October, 1888.

“ To the Honorable JOHN HAGGART,  
“ Postmaster-General.

“ SIR,—I beg to state that I hereby accept your position to carry Her Majesty’s mails between St. John and Digby and Annapolis upon usual conditions and at and upon the same price as has been subsisting between your Department and the Nova Scotia S. S. Co, temporarily,—that is for a period of nine months—subject as usual to cancellation at an earlier period if deemed necessary by your Department.

“ I have the honor, to be,

“ Your obedient servant,

“ (Sd.) ROBERT B. HUMPHREY,

“ on behalf of N.B. & N.S.S. Co.”

On the same day the Secretary of the Post Office Department wrote to the Post Office Inspector at St. John, N. B., as follows :—

“ POST OFFICE DEPARTMENT, CANADA,

“ OTTAWA, 30th October, 1888.

“ SIR,—With reference to the arrangements now being made for the continuance of the mail service between St. John, Annapolis and Digby, I am desired

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“ by the Postmaster-General to instruct you to enter  
 “ into an agreement with Mr. R. B. Humphrey, acting  
 “ on behalf of the New Brunswick and Nova Scotia  
 “ Steamship Company, for the temporary performance  
 “ of this service on the same terms and conditions as  
 “ those under which the service is at present performed.

“ I am, Sir,

“ Your obedient servant,

“ (Sd.) W. D. LESUEUR,

“ *Secretary*

“ S. J. KING, Esq., P.O. Inspector, St. John, N. B.”

As the old contract was on the eve of expiring, the suppliant, on the 1st November, 1888, commenced to carry the mails, but although notified by the Post Office Inspector to enter into and execute the temporary agreement referred to no such contract or agreement was ever made, and the suppliant continued until the 27th December, 1888, to carry the mails, when the Postmaster-General, finding that the service was not being properly performed, notified the suppliant that the temporary arrangement with him was at an end.

The suppliant then claimed that his contract was for a definite period of nine months, and that it had been broken by the Postmaster-General, and he demanded reimbursement for moneys alleged by him to have been expended in making preparations to carry out his undertaking, and for damages for the breach of contract. Upon being informed that there was no contract existing for any definite period, but that only a temporary arrangement had been made with him subject to being put an end to at any time, and that the Department could not recognize any claim for damages, he presented his petition of right.

November 26th, 1890.

*Pugsley*, Q.C. (Solicitor-General, N.B.) for suppliant;  
*McLeod*, Q.C. for respondent.

The evidence and argument having been concluded,

the learned judge stated that he was inclined to be of the opinion that, under the evidence, there had been a contract with the Postmaster-General of which there had been a breach; but that he would reserve that question for the meantime and refer the matter to a special referee to enquire and report as to the damages.

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January 19th, 1891.

*Hogg*, Q.C. for the respondent applied to re-open the case and to adduce further evidence.

*Pugsley*, Q.C. *contra*.

Application allowed upon terms that the costs already incurred under the reference, of this application, and of the taking of further evidence should be costs to the suppliant in any event.

January 21st, 1891.

*Pugsley*, Q.C. for the suppliant;

*Hogg*, Q.C. for the respondent.

The Postmaster-General and Mr. White, the Deputy Postmaster-General, were examined for the crown, and the suppliant in reply.

At the conclusion of the argument, BURBIDGE, J. delivered judgment:

When this case was before me at St. John, no question of the Postmaster-General's authority to make the contract set out in the first paragraph of the petition of right was raised, and I assumed that the crown did not desire to raise that question, nor need I discuss it now.

I thought then that the evidence of the suppliant, in no way contradicted or questioned, showed that there was a contract for a nine months' service, the crown having the right sooner to terminate the same on giving the notice mentioned. But that view cannot be maintained in the face of the testimony of the Honorable Mr. Haggart and Mr. White, from which it appears that neither of them, so far as the details of the arrang-

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ment were concerned, came to terms with the suppliant. Certainly they never made any arrangement of which one condition was that it should continue for any definite time. It appears from the departmental letter of October 30th, 1888, that the duty of arranging the terms of the temporary agreement with the suppliant was delegated to Mr. King, the Inspector at St. John, and such terms were never settled. The giving of the mails to be carried was, it will be observed, equally consistent with the Honorable Mr. Haggart's and Mr. White's view of the understanding, and also with Mr. Humphrey's. I find that the respondent did not enter into the contract set out in the first paragraph of the petition.

I desire to add that I do not doubt that there has been a misunderstanding, which might easily have been avoided if Mr. White had read with any care the suppliant's letter of October 30th, 1888, and if the action were against him personally, or against the Honorable Mr. Haggart as his principal, it might be that they would not be heard to say that the contract was other than that indicated in such letter. But Her Majesty is the defendant, and the doctrine of estoppel cannot be invoked against Her.

I think, however, that the case is a hard one; but that is a matter for the consideration of the crown, to whose grace and bounty it may be that it would commend itself if the facts were properly presented to His Excellency.

I give judgment for respondent with costs to November 27th, 1890, and costs of reference and subsequent to that date to suppliant and to be set off.

*Judgment for respondent, costs distributed.*

Solicitor for suppliant : *W. Pugsley.*

Solicitor for respondent : *E. McLeod.*