

WILLIAM HAWKINS HALL.....PLAINTIFF;

1893

AND

Oct. 2.

HER MAJESTY THE QUEEN.....DEFENDANT.

Parol contract between Crown and subject—42 Vic. c 7, s. 11—R. S. C. c. 37, s. 23—Effect of such provisions where contract executed—Quantum meruit.

The provisions of section 11 of 42 Vic. c. 7 and of the 23rd section of R. S. C. c. 37, do not apply to the case of an executed contract; and where the Crown has received the benefit of work and labour done for it, or of goods or materials supplied to it or of services rendered to it by the subject at the instance and request of its officer acting within the scope of his duties, the law implies a promise on the part of the Crown to pay the fair value of the same.

ACTION for the recovery of damages arising out of an implied contract.

The plaintiff was the owner of a saw-mill at Buckhorn, in the County of Peterborough, Ontario, driven by water-power derived from a dam belonging to the Crown. In the years 1886 and 1887 plaintiff held the position, under the Dominion Government, of Slide-master at Buckhorn, and it was his duty to regulate the flow of water over the said dam in accordance with the instructions of the Government Engineer in charge of certain works then being carried on for the improvement of navigation on the Trent River. In order to facilitate the construction of the said works it was desired to stop the flow of water at Buckhorn, and this could only be accomplished effectually at the time by closing down the plaintiff's mill which was then in full operation. In September, 1886, the Government Engineer ordered the plaintiff to close down his mill whenever the contractor should

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require him to do so. In pursuance of those instructions, and by the direction of the contractor, the plaintiff on several occasions closed down his mill, and thereby suffered considerable loss in prosecuting his milling business. There was no express promise on the part of the Chief Engineer, or the officers acting under him to indemnify the plaintiff for such loss (1); but the Minister of Railways and Canals acquiesced in what had been done, and caused the plaintiff's claim to be investigated by a competent person on his behalf, who recommended that a certain sum be paid to the plaintiff in full satisfaction of his claim. It also appeared that the Minister thereafter took, or proposed to take, a vote of Parliament to compensate the plaintiff in respect thereof.

The case proceeded to trial at Peterborough on the 6th June, 1893, and was continued at Ottawa on the 27th June, 1893, and then concluded.

Hogg, Q.C. for the defendant: I rely upon the provisions of the 23rd section of chapter 37. of the *Revised Statutes of Canada*, which require a contract to be signed by the Minister of Railways and Canals, or by some one lawfully authorized on his behalf, before it shall be binding upon the Crown, as a sufficient defence in law to this action. (Cites *Wood v. The Queen* (2), and *Jones v. The Queen* (3).

Poussette, Q.C. for the plaintiff: I submit that the section of the statute relied on by my learned friend

(1) By sec. 23 of R. S. C. c. 37, it is enacted as follows:—No deed, contract, document, or writing relating to any matter under the control or direction of the Minister shall be binding upon Her Majesty, unless it is signed by the Minister, or unless it is signed by the deputy of the Minister, and countersigned by the Secretary of the Department, or unless it is signed by some

person specially authorized by the Minister, in writing, for that purpose: Provided always, that such authority from the Minister, to any person professing to act for him, shall not be called in question except by the Minister, or by some person acting for him or for Her Majesty.

(2) 7 Can. S. C. R. 634.

(3) *Ibid.* 570.

applies to executory contracts only. It is quite a different matter where something is done or forborne at the request of the Crown which it accepts and gets the benefit of. In such a case, and that is our case, the law raises an implied contract on the part of the Crown, in the same way as it would on the part of the subject, to pay for the same on a *quantum meruit*.

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BURBIDGE, J. now (October 2nd, 1893) delivered judgment.

There is no doubt upon the evidence in this case that the plaintiff shut down his mill at the instance and request of the Government Engineers in charge of the public work mentioned in the pleadings. It is objected, however, that the direction to shut down the mill was not in writing, and signed in accordance with the Statute, and that therefore the Crown is not bound thereby. In support of this position I am referred to the Act 42 Vic. c. 7 s. 11 and the 23rd section of the *Revised Statutes of Canada* c. 37, which are enactments of a like character,—the latter of which is as follows:

No deed, contract, document or writing relating to any matter under the control or direction of the Minister shall be binding upon Her Majesty, unless it is signed by the Minister, or unless it is signed by the deputy of the Minister, and countersigned by the Secretary of the Department, or unless it is signed by some person specially authorized by the Minister, in writing, for that purpose: Provided always, that such authority from the Minister, to any person professing to act for him, shall not be called in question except by the Minister or by some person acting for him or for Her Majesty.

A like question was considered in the case of *Wood v. The Queen* (1), arising upon the 7th section of *The Public Works Act of Canada*, 1867, by which it was provided that no deeds, contracts, documents or writings should be deemed to be binding upon the Department or should be held to be acts of the Minister,

(1) 7 Can S. C. R. at p. 645.

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unless signed and sealed by him or his deputy, and countersigned by the Secretary.

In that case Sir William B. Richards, C.J. expressed his view of the matter in the following terms:—

I do not think, however, that the 7th section would prevent the suppliant recovering for the actual value of the work done by him and accepted by the Department. I see no reason why the law may not imply a contract to pay for work done in good faith, and which the Department has received the benefit of. Suppose, instead of work done, the contract had been to furnish a quantity of timber, the lumber had been supplied and worked up by the workmen of the Department in finishing one of the public buildings; suppose for some reason the Department repudiated the verbal contract and refused to be bound by it, could it be said that the property of the suppliant could be retained and used for the purposes of the Department, and he not be paid for it because the statute said the contract on which it was furnished was not deemed binding on the Department? I should say not. The contract which is binding is that which arises from the nature of the transaction; having received the benefit of the contractor's property he ought to be paid for it under the new contract which the law implies. For the same reason, for the value of all services actually rendered by the suppliant before he was notified not to do any further work he ought to be paid. If only the seventh section were considered, I should, as at present advised, say the suppliant is entitled to recover what the services rendered by him were worth under the implied contract. It may be, that on further consideration my views as to the suppliant's right on this point would be less favourable.

It may be conceded that this opinion was given with some reservation, and that the decision of the question discussed was not necessary to the determination of the case, but still the views to which the learned Chief Justice gave expression are entitled to the greatest consideration, and must, I think, commend themselves to one's sense of what is fair and just. I cannot for myself think that it was the intention of Parliament that the provisions to which I have referred should be invoked to defeat the just demand of the subject for work or labour done for the Crown, or for goods or materials supplied to it and of which it has

received the benefit. In such and like cases the law implies, I think, as well against the Crown as against the subject, a promise to pay the fair value of the work done, the materials supplied, or the service rendered.

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There might of course be cases in which some question would arise as to the authority of the officer at whose instance the service was rendered, or as to whether or not he acted within the scope of his duties. But there is no such question in the present case. The direction to close down the mill was given by the Chief Engineer of Canals and continued by the officers immediately under him. Afterwards the Minister of the Department acquiesced in what had been done and, it appears, took or proposed to take, a vote of Parliament to compensate the plaintiff.

The amount is not in dispute. There will be judgment for the plaintiff for \$975, and the costs will follow the result.

Judgment accordingly.

Solicitors for plaintiff: *O'Connor & Hogg.*

Solicitor for defendant: *A. P. Poussette.*