

IN THE MATTER OF THE PETITION OF }  
 RIGHT OF MARIUS DUFRESNE.. } SUPPLIANT;

1920  
 Nov. 15.

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Petition of Right—Plans and Specifications—Quantum meruit—Interest—Architect's Tariff.*

D. was engaged in 1913 as supervising architect to take charge of the preparation of drawings and specifications for a Post Office, at Maisonneuve, and was to be paid for such services at the rate of 5% on the actual cost of the building. The plans and drawings were started and from time to time modified at the request of the Crown, after consultation with the Post Office officials; but on account of the war, or some other reason, not disclosed on the facts, the Crown did not start or proceed with the work. D. by his petition (filed in October, 1919) asked to be paid for his services.

*Held;* That although D. was not entitled to claim to be paid under articles 11 or 14 of the Architects' Tariff, his plans not being complete, nevertheless, as the plans and estimates had been ordered and accepted by the officers of the Crown, the Crown must be taken to have ratified what, in that respect, its officers had done; and D. was entitled to recover the value of his services under a quantum meruit.

PETITION of Right seeking to recover the sum of \$7,161 for plans prepared at request of the Crown for Post Office building contemplated to be erected in the city of Maisonneuve.

November 9th, 1920.?

Tried before the Honourable Mr. Justice Audette at Montreal.

*E. Lafleur K.C., and J. A. Bovin* for suppliant.

*F. J. Laverty K.C.,* for respondent.

The facts are stated in the reasons for judgment.

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AUDETTE J. this (November 15th, 1920) delivered judgment.

The suppliant, by his Petition of Right, seeks to recover the sum of \$7,161 for plans prepared by him, at the request of the Crown, for a post office building contemplated to be erected in the City of Maisonneuve, in the District of Montreal.

It appears from the evidence spread upon the record that, as far back as the 27th October, 1913, the suppliant accepted the position of supervising architect to have charge of the preparation of drawings and specifications etc., for the post office in question and started to prepare such drawings and plans, which were from time to time modified at the request of the Crown, after consulting with the post office officials.

Were there any doubt as to the validity of the contract under the circumstances, a matter which however appears to be conclusive in favour of the suppliant, it must be found, under the authority of *Henderson v. The Queen* (1); *Wood v. The Queen* (2); *Hall v. The Queen* (3); *May v. The King* (4), that the plans having been prepared, having been accepted by the Crown, having been modified at the request of the Crown, and of which it received full benefit,—that if the suppliant is not entitled to recover under an executed contract, he is entitled to recover under a *quantum meruit* for services rendered and goods supplied of which the Crown received the benefit.

The letter of engagement, exhibit No. 1, fixes the remuneration for such services at the rate of 5% of the actual cost of the building—and that charge would appear to be in conformity with Article 8 of the Architect's Tariff for the Province of Quebec, filed as Exhibit No. 24.

(1) 6 Ex.C.R. 39; 28 S.C.R. 425.

(3) 3 Ex. C.R. 373.

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

(4) 14 Ex. C.R. 341.

However, as time went by, from 1913, the Crown did not finally decide to start the works in question, and has not done so up to date,—either on account of the war, or for any other reason,—and the suppliant, by his Petition of Right filed in October, 1919, is now very reasonably asking to be paid for his services.

The question now remaining to be considered and decided is as to the question of the remuneration which should be paid under the circumstances. The plans and the estimates have been ordered and accepted by the officers of the Crown, and the Crown must be taken to have ratified what, in that respect, its officers have done. The plans, however, were not working plans, as is understood by builders and contractors. The chief architect of the Department of Public Works, on the 29th July, 1919 (Exhibit No. 34) offered \$3,570, in full and final payment for the preparation of the plans.

I find that suppliant is not entitled to any claim under article 14 of the Tariff. I further find he is not entitled to the full  $2\frac{1}{2}\%$  under article 11. His plans were not complete,—among other things, there was no longitudinal plan,—a plan required under the evidence to call the plan complete. Under all the circumstances of the case, I think a fair and just compensation will be 2% on the estimate of \$238,700—namely, the sum of \$4,774.

Pursuant to the leave mentioned at trial, I hereby order that the suppliant's pleadings be amended so as to agree with the facts proved, whereby if the suppliant cannot strictly recover under a specific item of the Architects' Tariff, he may recover upon a *quantum meruit*. (Arts. 518, 520, C.C.P., P.Q.).

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The suppliant is further asking for interest. Under the decision of the case of *St. Louis v. The Queen* (1), ever since followed in this court, I also find he is further entitled to interest from the date the petition of right was lodged with the Secretary of State, as provided for by sec. 4 of the Petition of Right Act, a date which may hereafter, by leave, be established by affidavit, at the time of the settlement of the minutes of judgment.

Therefore, there will be judgment declaring that the suppliant is entitled to recover from and be paid by the respondent the said sum of \$4,774 with interest thereon from the date of the lodging of the petition of right with the Secretary of State to the date hereof, and with costs.

*Judgment accordingly.*

Solicitors for applicant: Taillon, Bovin, Morin & Laramée.

Solicitors for respondent: Blair, Laverty & Hale.

(1) 25 S.C.R. 649.

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