

THE QUEEN, ON THE INFORMATION OF }
 THE ATTORNEY-GENERAL FOR THE } PLAINTIFF;
 DOMINION OF CANADA..... }

1888
 Dec. 13.

AND

JOSEPH N. POULIOT, FORTUNAT }
 F. ROULEAU AND ARTHUR P. } DEFENDANTS.
 LETENDRE..... }

Information—Statutory defence—Demurrer—Illegality of contract—Dominion Elections Act, 1874—Interpretation Act (R.S.C. 1 s. 7 sub-sec. 46).

The information alleged an agreement with Her Majesty whereby in consideration of the conveyance by the Intercolonial Railway of certain passengers between certain stations, the defendants agreed to pay Her Majesty, through the proper officers of that railway, the fares or passage money of such passengers at the rate therein mentioned as agreed to between the defendants and such officers. The defendants, admitting the agreement as alleged, sought to avoid it by setting up as a defence that such passengers were carried on *bons* in blank signed by one of the defendants only.

Held, (on demurrer to the plea) to be no answer to the breach of contract alleged.

2. The Crown is not bound by sections 100 and 122 of *The Dominion Elections Act, 1874*.
3. The 46th clause of the 7th section of *The Interpretation Act*, (R.S. C. c. 1.) whereby it is provided that no provision or enactment in any Act shall affect in any manner or way whatsoever the rights of Her Majesty, Her Heirs or Successors, unless it is expressly stated therein that Her Majesty shall be bound thereby, is not limited or qualified by any exception such as that mentioned in *The Magdalen College case* (11 Rep. 70b), "that the King is impliedly bound by statutes passed for the general good *
 " * * or to prevent fraud, injury, or wrong."

DEMURRER to defendants' pleas.

By an information filed by Her Majesty's Attorney-General for the Dominion of Canada the court was informed as follows:—

- "1. The Intercolonial Railway is a public work of

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the Dominion of Canada vested in Her Majesty The Queen, and is managed and worked by officers duly appointed by and under the control of the Government of the said Dominion.

“ 2. That, in the month of September A.D. 1878, the defendants entered into an agreement with Her Majesty, through certain of the officers managing the said Inter-colonial Railway, whereby in consideration of the carriage and conveyance over and upon the said railway, between certain stations, of certain passengers, they the defendants would pay to Her Majesty, through the proper officer of the said railway, the fares or passage money of the said passengers at the rates hereinafter mentioned, as then agreed upon between the defendants and the said officers.

“ 3. That in pursuance of the agreement mentioned in the preceding paragraphs, there were carried and conveyed over and upon the said railway a large number of passengers, to wit : eight hundred and fifty-four, at the prices, and between the stations, following:—

34	passengers, return tickets,	Bic to Rimouski,	at 20c.....	\$ 6 80
160	do	do St. Fabien do	at 38c.....	60 80
191	do	do St. Simon do	at 58c.....	110 78
100	do	do Ste. Luce do	at 20c.....	20 00
208	do	do Ste. Flavie do	at 36c.....	74 88
100	do	do Metis Rd. do	at 46c.....	46 00
61	do	do St. Octave do	at 54c.....	32 94
<hr/>				
854				\$352 20

Whereby the said defendants have become indebted to Her said Majesty in a large sum of money, to wit :— the said sum of \$352.20.

“ 4. The defendants have not paid Her Majesty the said sum of \$352.20, or any part thereof, and the whole of the said sum is now due, together with interest thereon from the 10th day of September A.D. 1878.

Whereby Her Majesty is entitled to demand judgment against the defendants.

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“ Judgment against the said defendants for the sum of \$352.20, with interest thereon at the rate of six per cent. per annum, from the 10th day of September, A.D. 1878, and costs of suit.”

To this information the defendants pleaded as follows :—

“ 1. The said defendants in this cause, for plea or answer to the information of the Honourable the Attorney-General for the Dominion of Canada, on behalf of Her Majesty, not confessing or acknowledging any of the matters and things in the said information set forth and alleged to be true, but on the contrary hereby expressly denying the truth of each and every the allegations of the said information, saith :

“ 2. That the said passengers, in the information mentioned, were so carried and conveyed to Rimouski from certain places therein mentioned and back, on *bons* in blank signed by the defendant Joseph N. Pouliot in the following form :

“ Good for return tickets to Rimouski and back on the tenth September instant.

“ J. N. POULIOT.

“ Rimouski, 7th September, 1878.

“ And that the plaintiff should, and ought to have brought Her said action against the said Joseph N. Pouliot on the said *bons*.

“ 3. That the said alleged agreement in the information mentioned (which said alleged agreement, except for the purposes of this plea, the defendants do not admit) was made on or about the 7th day of September, A.D., 1878, and that the 10th day of the said month of September was the day appointed at the last general elections for the nomination of candidates to serve as

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members of the Parliament of Canada, and that the said alleged agreement was an executory contract, promise, or agreement unlawfully made between the plaintiff, Her said Majesty represented as in the information mentioned by the said certain officers managing the said Intercolonial Railway and the defendants, and was an executory contract, promise, or agreement to carry and convey on the said 10th day of September certain passengers, as in the said information mentioned, to the town of Rimouski and back to the respective homes of such passengers, for the purpose of being present at the said town of Rimouski at the said nomination of candidates to serve as member aforesaid for the county of Rimouski, and for the purpose of hearing the election speeches of the said candidates, with the intent and in view of influencing the electors aforesaid to vote for Doctor Romuald Fiset, hereinafter mentioned, a fact well known to the plaintiff, represented as aforesaid, at the time of such agreement, and for other election purposes, or for purposes arising out of or connected with the said election; and that at the nomination the said Doctor Romuald Fiset, a member of the Parliament of Canada for the said county of Rimouski and the Honourable Hector L. Langevin, C. B. were nominated as candidates to serve as member, as aforesaid; and that the said passengers in the said information mentioned, being supporters of the said Doctor Romuald Fiset, and duly qualified to vote as electors at the said election for the county of Rimouski, were carried under the said alleged agreement for the election purposes aforesaid and not otherwise; and that the said conveyance of the said passengers unlawfully did influence the whole election in favor of the said Doctor Romuald Fiset; and that at the time of entering into the said alleged agreement, and at the time of carrying the said

passengers, the plaintiff, represented as aforesaid, had full notice of the premises.

Wherefore the defendants say that by reason of the premises, and of *The Dominion Elections Act, 1874* (1), the said alleged agreement in the information mentioned was and is void and of no effect; and pray that the said information be hence dismissed and set aside with costs."

"4. That the said alleged agreement in the information mentioned (which said alleged agreement, except for the purposes of this plea, the defendants do not admit) was made on or about the 7th day of September A.D., 1878, and that the 10th day of the said month of September was the day appointed at the last general election for the nomination of candidates to serve as members of the Parliament of Canada, and that the said alleged agreement was an executory contract, promise or agreement, made between the plaintiff, Her said Majesty, represented, as in the information mentioned, by the said certain officers managing the said Intercolonial Railway and the defendants as agents of, and as representing, one Doctor Fiset hereinafter re-

(1) Sec. 100 reads as follows:—
"Every executory contract, or promise, or undertaking, in any way referring to, arising out of, or depending upon, any election under this Act, even for the payment of lawful expenses, or the doing of some lawful act, shall be void in law; but this provision shall not enable any person to recover back any money paid for lawful expenses connected with such election."

The portion of sec. 122 which affects the case is as follows:—

"All persons who have any bills, charges or claims upon any candidate for or in respect of any election, shall send in such bills, charges

or claims within one month after the day of the declaration of the election, to such agent or agents as aforesaid; otherwise such persons shall be barred of their right to recover such claims, and every or any part thereof, * * * provided that such bills, charges and claims shall and may be sent in and delivered to the candidate, if and so long as, during the said month, there shall, owing to death or legal incapacity, be no such agent; and provided also, that the agent shall not pay any such bill, charge or claim without the authority of the candidate, as well as the approval of the agent."

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ferred to and was an executory contract, promise or agreement to carry and convey on the said tenth day of September certain passengers, as in the said information mentioned, to the town of Rimouski and back to the respective homes of such passengers, for the purpose of being present at the said town of Rimouski at the said nomination of candidates to serve as member aforesaid, and for the purpose of hearing the election speeches of the said candidates and for other election purposes, or for purposes arising out of, or connected with, the said election, and that at the said nomination the said Doctor Romuald Fiset, a member of the Parliament of Canada for the said county of Rimouski, and the Honourable Hector L. Langevin, C.B. were nominated as candidates to serve as member as aforesaid, and that the said passengers in the said information mentioned, being supporters of the said Doctor Fiset and duly qualified to vote as electors at the said election for the county of Rimouski, were carried under the said alleged agreement for the election purposes aforesaid, and not otherwise; and that at the time of entering into the said alleged agreement and at the time of carrying the said passengers, the plaintiff, represented as aforesaid, had full notice of the premises.

“5. And that afterwards the election was duly holden and the said Doctor Romuald Fiset was duly elected as member as aforesaid, but the plaintiff did not, within one month after the day of the declaration of the said election, send in or transmit to the defendant, Fortunat F. Rouleau, the duly appointed agent of the said Doctor Fiset at the said election, any claim for the said carriage and conveyance of the said passengers in the information mentioned, in pursuance of section 122 of *The Dominion Elections Act, 1874*.

“Wherefore the defendants submit by reason of such default in sending in such claim, and by force of the

said *The Dominion Elections Act*, 1874, the said alleged agreement in the information mentioned became and is void and of no effect, and pray that the said information be hence dismissed and set aside; the whole with costs.

“6. And the said defendants for a further plea to the said information of the Honourable the Attorney-General of Canada on behalf of Her Majesty, in this cause filed, hereby expressly deny the truth of each and every allegation of facts stated and set forth in the said information.

“7. Wherefore the defendants pray that by the judgment in this cause the said information be held and declared to be not well founded, and that it be hence dismissed and set aside; the whole with costs.

The plaintiff joined issue upon the pleas of the defendants, and also demurred thereto as follows:—

“1. The plaintiff joins issue on all the pleas or defences of the defendants herein to the information of the plaintiff.

“2. The plaintiff demurs to the first plea or answer of the defendants herein, and says the same is bad in law on the grounds following:

Because the claim of the plaintiff is based upon a contract made by the defendants, which is set out in the information, whereby the defendants agreed to pay to Her Majesty the moneys mentioned in the information, and it is no answer to the breach of said contract to allege that the passengers, for the carriage of whom the claim is made under the contract set out, were carried on *bons* signed by one of the defendants.

“3. The plaintiff also demurs to the second plea or defence of the defendants herein, and says the same is bad in law on the grounds following:

Because the provisions of *The Dominion Elections Act*, 1874, referred to in the said plea or defence, do not prevent Her Majesty from recovering upon the

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contract set out in the information, as such provisions do not apply to the Crown.

“4. The plaintiff also demurs to the third plea or defence of the defendants herein, and says the same is bad in law on the grounds following :

Because the provisions of *The Dominion Elections Act*, 1874, referred to in the said plea or defence, do not prevent Her Majesty from recovering upon the contract set out in the information, as such provisions do not apply to the Crown.”

November 29th, 1888.

Hogg, in support of demurrer : The Crown is not within the purview of the prohibitory clauses of *The Dominion Elections Act*, 1874: [1.] Because the Sovereign can do no wrong, and therefore Parliament could not be supposed to have intended to legislate against the Crown in such a case; [2], the provisions of *The Interpretation Act* (R. S. C. c. 1, s. 7, sub-sec. 46) explicitly except the Crown from the operation of any Act wherein it is not expressly mentioned that it shall be bound thereby.

Cites *Chitty on Prerogatives* (1); *Maxwell on Statutes* (2).

Sinclair, contra: The word “rights” as used in sub-sec. 46 of sec. 7 of *The Interpretation Act*, means *prerogative* rights only, and the Crown never had any prerogative right to enforce a contract such as the one set out in the information in this case. The Legislature by this sub-section only intended to re-enact the rule at common law, that the Crown may be bound by express words or necessary implication; and this statute being for the public good, upon well recognized principles, impliedly bound the Crown. In order to accede to the argument of the learned counsel for the Crown that no statute can affect the Sovereign

(1) P. 382.

(2) 2nd ed. p. 161.

unless the Sovereign is mentioned therein, this sub-
 section must be construed as if it read "no provision
 in any statute shall affect Her Majesty," &c., leaving
 out the word "rights" as superfluous. He cited
Chitty on Prerogatives (1), *Hardcastle on Statutory*
Law (2).

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BURBIDGE, J., now (December 13th, 1888) delivered judgment.

It is alleged in the information in this case that the defendants entered into an agreement with Her Majesty, through certain officers managing the Intercolonial Railway, whereby, in consideration of the carriage and conveyance over and upon the said railway between certain stations of certain passengers, the defendants agreed to pay to Her Majesty, through the proper officers of the said railway, the fares or passage money of such passengers at the rate therein mentioned, as agreed upon between the defendants and such officers. The defendants, admitting the agreement, seek to avoid it, by setting up as a defence thereto that such passengers were carried on *bons* in blank, signed by the defendant Joseph N. Pouliot in the following form:—

Good for return tickets to Rimouski and back on the tenth
 of September instant.

(Signed) J. N. POULIOT.

Rimouski, 7th September, 1878.

and that the action should have been brought against the said Joseph N. Pouliot on such *bons*.

To this plea the plaintiff demurs on the ground that it does not present an answer to the breach of contract alleged; and of that there can, I think, be no doubt. If the defendants promised, as alleged, to pay the fares mentioned, their liability cannot be in any way affected by the fact that the passengers were carried on the production, to the officer in charge of the train, of such

(1) Pp. 4-7.

(2) Pp. 180-185.

1888 *bons* or orders, or that such *bons* were signed by one
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v. The second and third pleas suggest a number of
 POULIOT. questions, but the argument was confined to the single
 — issue raised by the demurrer as to whether or not the
Reasons Crown is bound by the provisions of the 100th and
for 122nd sections of *The Dominion Elections Act*, 1874
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By the 100th section of the Act mentioned it is provided that every executory contract, or promise, or undertaking in any way referring to, arising out of, or depending upon any election under the Act, even for the payment of lawful expenses or the doing of some lawful act shall be void in law, but that no person shall receive back any money paid for lawful expenses connected with any such election. This provision first occurs, I think, in an Act of the Province of Canada for the more effectual prevention of corrupt practices at elections (23 Vic. c. 17, s. 6).

By the first clause of the 122nd section of *The Dominion Elections Act*, 1874, it is enacted that all persons who have any bills, charges or claims upon any candidate for or in respect of any election, shall send in such bills, charges, or claims within one month after the day of the declaration of the election to the agent of the candidate, otherwise such persons shall be barred of their right to recover such claims. A similar provision is to be found in an Act of the Parliament of the United Kingdom to amend the law relating to corrupt practices at elections (26-27 Vic. c. 29, s. 3).

The law as to what statutes are binding on the Crown is to be found in the 46th clause of the 7th section of *The Interpretation Act* (R. S. C., c. 1), where it is enacted that no provision in any Act shall affect, in any manner or way whatsoever, the rights of Her

Majesty, Her Heirs and Successors, unless it is expressly stated therein that Her Majesty shall be bound thereby.

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This provision occurs for the first time, I think, in an Act of the Province of Canada for putting a legislative interpretation on certain terms used in Acts of Parliament, and for rendering it unnecessary to repeat certain provisions and expressions therein, and for ascertaining the date and commencement thereof, and for other purposes (12 Vic., c. 10, s. 5, (25)). From this Act it found its way into the *Consolidated Statutes of Canada* (c. 5, s. 6 (25)), and was made applicable to the *Consolidated Statutes of Lower Canada* and of *Upper Canada* (C.S.L.C., c. 1, s. 13,—C.S.U.C., c. 12, s. 19). It is also found in *The Interpretation Act* passed in 1867 by the Parliament of Canada (31 Vic., c. 1, s. 7 (33)); in 1868, by the Legislature of Ontario (31 Vic., c. 1, s. 7 (31)); in 1871, by the Legislature of Manitoba (34 Vic., c. 1, s. 7 (27)); and in 1872, by the Legislature of British Columbia (35 Vic., c. 1, s. 7 (30)); and has been continued in subsequent revisions of the statutes of the Dominion and of the Provinces named. In the *Quebec Interpretation Act* (31 Vic., c. 7, s. 5) the language of the older statutes was not followed, it being provided that "no Act affects the rights of the Crown unless they are specially included."

The general rule to be deduced from decided cases is that the Crown is not bound by a statute unless named therein, or included therein by necessary implication.

When, from the language used, it is manifest that it was the intention of the Legislature to include the Crown, it is sufficiently named within this rule (1).

(1) *Moore v. Smith*, 1 El. & El., App. Cas., 102; *Cushing v. Dupuy*, 597; *Theberge v. Landry*, L. R., 2 L. R., 5 App. Cas., 409.

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The Interpretation Act, however, in its literal and grammatical meaning demands more than this. Not only must the Queen be named, but her rights are not to be affected unless it is expressly stated in the enactment that she shall be bound thereby.

It is not necessary, however, in this case to come to a conclusion as to whether or not the general rule to which I have referred has been narrowed by *The Interpretation Act*, for it is not contended that there are in *The Dominion Elections Act*, 1874, any words which, either expressly or by implication, indicate an intention on the part of the Legislature that the Crown should be bound thereby.

The defendants' contention is that *The Dominion Elections Act*, 1874, falls within the exception to be found in the older authorities "that the King is impliedly bound by statutes passed for the general good; the relief of the poor; the general advancement of learning, religion and justice; or to prevent fraud, injury or wrong (1)."

It is to be observed that the language of the exception is very general and large enough to include many statutes that have never been thought to apply to the Crown. In *Maxwell on the Interpretation of Statutes* (2), it is stated that probably it is more accurate to say that the Crown is not excluded from the operation of a statute where neither its prerogatives, rights, nor property are in question; and though it may be true that there is no case in which the very general propositions propounded by Lord Coke in the *Magdalen College case* (3), have been expressly denied or over-ruled (4),

(1) Chitty on Prerogatives, p. 382; *Magdalen College, case* 11 Rep. 70b; Bac. Abr. *Prerogative* (E.) Vol. 8; Maxwell on Statutes p. 166; Hardcastle on Statutory Law p. 185; Wilberforce on Statute Law, pp. 40-41.
 (2) P. 167.
 (3) Cited *ante*.
 (4) Hardcastle on Statutory Law, p. 190.

they have not, I think, been approved or followed in later cases.

With reference to the fact that the enactments in question occur in statutes for the prevention of corrupt practices at elections, and were passed with a view of preventing such practices, it appears to me for obvious reasons that the proposition that the law is *primâ facie* made for subjects only applies with peculiar force to such statutes.

Then, too, it is to be observed that the 100th and 122nd sections of *The Dominion Elections Act, 1874*, create statutory defences to actions upon contracts arising out of Parliamentary elections—the former by making any such executory contract void, and the latter by barring the remedy against the candidate if its provisions are not complied with. But the law is that a defendant cannot, in a proceeding on behalf of the Crown, plead a defence given by statute unless the Crown is named therein; and it has never been doubted that the right of the Queen to collect debts due to her, and the remedies that she may employ therefor, are not impaired by any Act of Parliament unless the Crown is by express words or necessary implication included therein (1).

Looking at the language used by the Legislature, "All persons shall send in such bills &c." (122nd section)—"this provision shall not enable any person to recover back any money paid for lawful expenses" (100th section)—and having regard to the context and the relation of the Crown to the election of members of the House of Commons, I would, apart from *The Interpretation Act*, be of opinion that the Legislature did not intend the provisions of *The Dominion Elections Act, 1874*, referred to, to apply to the Crown (2).

(1) Chitty on Prerogatives pp. 366-383. mond 1066; *The Queen v. Benson* 2 P. R. (U.C.) 350; *Regina v.*

(2) *R. v. Tuchin* 2 Ld. Ray- Davidson 21 U.C.Q.B.41.

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But in my opinion *The Interpretation Act* is conclusive. Its language is explicit and I fail to discover any good reason for modifying its plain negative words by reading into the Act a provision of such general character, and doubtful authority, as the exception to which I have alluded.

The defendant also contends that the word "rights" in the 46th paragraph of the 7th section of *The Interpretation Act* means prerogative rights; that Her Majesty has no prerogative right to interfere in the carrying on of elections for the purpose of unlawfully influencing the result; that the provisions of *The Dominion Elections Act, 1874*, directed against such unlawful interference, do not impair or affect any of Her Majesty's prerogatives, and are therefore binding on the Crown and subject alike.

This contention, it seems to me, is open to a number of observations; but I do not propose to discuss it further than to repeat that the rights affected by the 100th and 122nd sections of the Act last mentioned are rights of action, and that in the case of the Crown such rights, and the remedies by which they are enforced, are not affected by any statute unless there are words therein manifesting on the part of the Legislature an intention so to affect them.

Briefly stated the case is this:—The defendants, admitting that they promised the Crown to pay the fares or passage money as mentioned, allege that the action cannot be maintained because the promise arose out of an election under *The Dominion Elections Act, 1874*, and the 100th section thereof makes such promise void, and the 122nd section bars the remedy,—no statement of claim having been sent to the candidate's agent within one month after the day of the declaration of such election. To this plea the plaintiff demurs on the ground that, assuming the promise to have arisen

out of an election under the Act relied on, neither Her Majesty's right of action, nor her remedy for enforcing the same, is defeated or affected by the Act, as the Crown is not included therein either by express words or necessary implication; and in my opinion the demurrer should be sustained.

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There will be judgment for the plaintiff on demurrer to the defendants' pleas.

Demurrer allowed with costs.

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

Solicitor for defendants: *J. N. Pouliot.*
