

HIS MAJESTY THE KING.....PLAINTIFF;

1922
Nov. 30.

AND

THE CITY OF HULL.....DEFENDANT.

Contract—Municipal Law—Hull City Charter—Interpretation.

With a view to the beautification of the cities of Ottawa and Hull and making adequate and convenient arrangements for traffic and transportation within the area in question, etc., the Dominion Crown passed an order in council providing that a commission should be constituted consisting of at least six members, inclusive of the mayor of the cities of Ottawa and Hull, charged with the duties of taking all necessary steps to draw up and perfect such plan, as well as for the systematic development of the cities. The Government to pay half the cost of preparing such plan, the other half to be paid by the two cities in proportion to their population. This was communicated to the city of Hull which at a special meeting passed a resolution approving of the project submitted and appointing the mayor and one alderman to meet with the other members of the proposed commission, to discuss the matter with them and to report. Subsequently the city of Hull passed another resolution that having heard the report of their representatives, etc., it approved of the project as submitted. This was communicated to the Crown who thereupon, by order in council, appointed the commission and the personnel thereof, the mayor of Hull becoming a member. He was present at most meetings and copies of plans prepared by the commission were sent to the city who obtained leave to use parts thereof to advertise the city.

Held that by the orders in council and resolutions above referred to, a valid and binding contract was entered into by the city of Hull with the Dominion Crown to pay its share of the plans, etc., and that a right of action has arisen therefrom in favour of the Crown to recover from the city, notwithstanding the contention of the city that it did not put the amount in its annual estimates, that it did not represent expense for any one current year, that no by-law was passed for payment thereof or submitted to the ratepayers, and that the treasurer had not produced a certificate that funds were in hand available for its payment.

INFORMATION of the Attorney-General of Canada seeking to recover from the city of Hull the sum of \$6,560.32 as part of this city's share of certain plans prepared by a commission appointed for the purpose of beautifying the

Reporter's Note:—An appeal has been taken herein to the Supreme Court of Canada.

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cities of Ottawa and Hull and of providing for its future development.

October 18, 1922.

Case now heard before the Honourable Mr. Justice Audette at Ottawa.

Napoléon Champagne, K.C. for plaintiff;

R. V. Sinclair, K.C. and *J. Wilfrid Ste. Marie, K.C.* for defendant.

The facts are stated in the reasons for judgment.

AUDETTE, J. now (November 30th, 1922) delivered judgment.

This is an information, exhibited by the Attorney-General of Canada, whereby it is sought to recover from the defendant the sum of \$6,560.32, under an agreement entered into between the Crown and the cities of Ottawa and Hull, as set out in the orders in council and resolutions of the Hull municipal council hereinafter mentioned, for the appointment of a commission to supervise the preparation of plans for regulating the future growth and development of the two cities respectively and the surrounding district, etc.

It is, *inter alia*, admitted by the parties (exhibit No. 1) that, if there is any legal liability on the part of the defendant to pay the plaintiff anything, the amount payable is \$6,560.32, with interest from the 25th August, 1918.

And it is further admitted that, pursuant to the order in council of the 12th September, 1913, the mayor of Hull became a member of the commission constituted by the said order in council.

By the order in council of the 5th June, 1913 (No. 1317), it is provided as follows, viz:—

On memorandum dated 29th May, 1913, from the Minister of Finance, submitting that, with others of his colleagues, he has had under consideration the need for the adoption of a comprehensive scheme or plan, looking to the future growth and development of the city of Ottawa and the

city of Hull and their environs, particularly providing for the location, laying out and ornamentation of parks and connecting boulevards, the location and architectural characteristics of public buildings, and adequate and convenient arrangements for traffic and transportation within the area in question.

To this end the Minister is of opinion that a Commission should be constituted, consisting of at least six members, inclusive of the mayor of the city of Ottawa and the mayor of the city of Hull, charged with the duty of taking all necessary steps to draw up and perfect such a plan for the purpose of the beautification and systematic development of the two cities. To carry out this plan, the city of Ottawa, the city of Hull, and the Ottawa Improvement Commission, together with the transportation and traffic companies, would all be required to co-operate with a view to its gradual completion.

It would seem equitable that the Government should pay half the cost of preparing such a plan and that the other half should be paid by the two cities jointly and ratably according to population.

The Minister therefore recommends that the civic authorities in the respective cities be invited to express their views as to the proposals herein made, to say whether they are willing to bear half the expense involved and to assent to the appointment of their respective mayors on such commission.

The committee concur in the foregoing and submit the same for approval.

On the 12th June, 1913, the Minister of Finance transmitted to the mayor of the city of Hull a copy of this order in council (5th June, 1913) asking, among other things, the city council to express its views as to the proposals made, etc.

On the 20th June, 1913, at a special meeting of the council of the city of Hull called for the purpose of considering such proposals, it was resolved that:

Attendu que ce conseil approuve le projet d'embellissement de la cité tel que proposé par le conseil privé d'Ottawa, et soumis à ce conseil ce soir:

Proposé par l'échevin Thibault.

Secondé par l'échevin Leduc.

Qu'un comité composé de M. le maire et de M.M. les échevins Doucet et le proposeur, soit nommé dans le but de rencontrer les membres du comité du conseil de ville de la cité d'Ottawa, la commission d'embellissement et les membres du conseil privé afin de discuter les propositions contenues dans l'ordre-en-conseil No. 1317, et le rapport du comité du conseil privé approuvé par son Excellence l'Administrateur, en date du 5 juin 1913, relativement à la coopération par la cité d'Ottawa et la cité de Hull à la préparation de plans pour l'embellissement systématique de ces deux cités; et que ce comité fasse rapport au conseil.

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Copy of this resolution was transmitted to the Crown on the 25th June, 1913 (exhibit No. 4), with request to be advised when they could meet the committee.

On the 19th July, 1913, the city of Hull (exhibit No. 6) advised the Crown that at a special meeting of the council of the city of Hull, held on the 18th July, the following resolution was passed and adopted:

Que ce conseil, après avoir entendu le rapport verbal du comité spécial chargé de rencontrer les représentants du gouvernement fédéral relativement à l'embellissement des cités d'Ottawa et de Hull, approuve le projet tel que soumis par le ministre aux membres du comité et que copie de cette résolution soit envoyée au ministre des Finances, à Ottawa.

Thereupon, on the 12th September, 1913, at the recommendation of the Minister of Finance, a further order in council was passed, providing, among other things, as follows:

On a memorandum dated 8th September, 1913, from the Minister of Finance, submitting that in an order in council dated the 5th June, 1913, it was provided that a commission should be constituted consisting of at least six members inclusive of the mayor of the city of Ottawa and the mayor of the city of Hull charged with the duty of taking all necessary steps to draw up and perfect a comprehensive scheme or plan looking to the future growth and development of the city of Ottawa and the city of Hull and their environs and particularly providing for the location, laying out and beautification of parks and connecting boulevards, the location and architectural character of public buildings and adequate and convenient arrangements for traffic and transportation within the area in question.

In this order in council it was further provided that the Government should pay half the cost of the said plan and that the other half should be paid by the two cities jointly and ratably according to population.

The Minister has been officially informed that the municipal authorities have expressed their desire to co-operate with the Government in carrying out the proposal and in bearing their share of the expense as mentioned.

The Minister, in view of the foregoing, recommends that an honorary commission be appointed for the purpose hereinbefore set forth, consisting of the following members, namely,—

- His Worship the Mayor of Ottawa, ex-officio.
- His Worship the Mayor of Hull, ex-officio.
- Sir Alexandre Lacoste, K.C., of the city of Montreal.
- Herbert S. Holt, Esq., of the city of Montreal.
- Frank Darling, Esq., of the city of Toronto.
- R. Home Smith, Esq., of the city of Toronto.

It appears from (exhibit 37) the minutes of the meetings of the commission that the mayor of Hull was present at most of the meetings, except when absent through illness (as therein mentioned) or otherwise.

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Furthermore the report of the commission, with copies of plans (exhibit 36) was duly transmitted to the city of Hull after being duly signed by the mayor of that city. And as some of these plans were dealing specifically with the city of Hull, the correspondence filed shows (exhibits 34, 35, 30, 32 and 33) that the city obtained leave to use these plans to advertise Hull.

When the adjustment of the accounts had been prepared (see exhibit 29) and an account rendered to both the city of Ottawa and the city of Hull respectively, the city of Ottawa remitted its share; but the city of Hull, after protracted correspondence exchanged with the Crown, stated the matter had been referred to its legal adviser. In the result the city of Hull refused to pay its share, hence the present controversy.

From the statement of facts above recited, I am of opinion that a perfectly valid contract was entered into as formulated by the two orders in council and the two resolutions of the municipal council of the city of Hull. The letter or language of these documents is perfectly clear, and were it not so, there would in addition be an implied and constructive approval of all their terms and conditions both by the general language used and by the conduct of the duly authorized parties.

The parties having entered into a good and valid contract (see par. 2 of section 392a of charter), a right of action has thereunder accrued to the plaintiff under the circumstances of the case.

Paragraph 2 of section 392a of the charter provides that:—

Aucun contrat ni arrangement quelconque ne liera la cité, à moins qu'il n'ait été approuvé par le conseil.

The contract in question has been submitted to and approved of by the municipal council of Hull and is therefore binding upon the city, as having been made in the manner provided by section 392a of the charter of the city

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and that alone would seem to entitle the plaintiff to succeed. It has become a "judicial obligation" which the city has to discharge under the provisions of section 393.

A number of cases have been cited at bar by the defendant against recovery, but in almost all these cases a proper or valid contract, as provided by the charter, had not been entered into, which in all cases should be the fundamental consideration.

It is admitted, as already mentioned, that the mayor of Hull became a member of the commission constituted by the order in council. The mayor sat at the meetings of the commission, participated in the deliberations and the city of Hull received and accepted the report of the commission including valuable plans which it intended to use for advertising the city.

However, the defendant refuses to pay upon the grounds that there is no appropriation or provision in the estimates for such extraordinary expenditure and that it had not procured the funds; that the claim does not represent the expense of any one current year; that there is no special by-law passed for the payment of the amount or submitted to the ratepayers; and that the city treasurer never produced to council a certificate under his hand showing there were funds in the possession of the city applicable to the payment of the amount.

The scope of this contract or agreement made in compliance with section 392a is well defined in the orders in council. It cannot be said as contended by counsel, that the expenditure is for the creation of a federal district. That would be confusing a recommendation of the commission with its scope defined by the orders in council as being the preparation of plans looking to the future growth and development of Ottawa and Hull and their environs and particularly providing for the location, and beautification of parks and connecting boulevards, etc., and adequate and convenient arrangements for traffic and transportation within the area in question.

Truly these subjects are such that concern the public and general utility of the citizens of Hull and which come within the scope of sub-sections 3 and 4 of section 390 of the

charter, namely, "contemplated improvements" or "gross unforeseen expenditures"; with, furthermore, the latitude allowed by section 392 "to, at any time, vary the application of appropriated sums to any committee to any other purpose within the jurisdiction of such committee," that is, in the present case the road committee or any committee dealing with such subjects.

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The scope of the works contemplated by the commission, as set out in the orders in council, also came within the ambit of sections 92, 142, 143, 144, and 146 of the charter of Hull.

In answer to the defendant's contention it may be said that the improvements, works and plans recommended, done and prepared by the commission have reference partly to improvements in the city of Hull, to traffic and transportation within its area, and more especially where it joins Ottawa—its jurisdiction, under section 4 of the charter extending to the centre of the Ottawa river,—and that there is no obligation that the costs thereof should be all paid in one year. It might be spread over the estimates of several years; and, in case the work has been done during several years, and the cost ascertained only at the end of that period, it is no plea to contend that the city of Hull is not liable because the works were not done during the fiscal year within which payment is asked.

It is also well to bear in mind that the work done or the plans prepared by the commission might be said to be more in the nature of preliminary works or plans necessary for the preparation of estimates, and the consideration of such works, than in the nature of working plans for settled works which might thereafter be contracted for. Were it decided to construct the works recommended by the commission, then a by-law submitted to the ratepayers, with the amount required, would have to be resorted to; but not in a case where the estimates have not been made and the amount sought to be recovered by this action and in the nature of such preliminaries which would be the foundation for the preparation of such estimates.

Furthermore, section 393 of the charter provides that the council may, in cases of urgent necessity (here the credit

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of the city being at stake), either for the purpose of meeting a "judicial obligation" or for other unforeseen or uncontrollable causes, procure the necessary funds to meet such obligation by such means as it may deem advisable.

It is true, as relied upon by the defendant, that the third paragraph of section 392a of the charter provides that the city shall not be liable for the price or value of works done, etc., without special authorization of the city council; but that authorization has been given in the present instance, given at two meetings of the council,—one of which being at the special meeting for the consideration of that very question.

The same sub-section further provides that the City will not be liable unless there is an appropriation in the estimates for the particular object for which payment is sought and that a certificate of the city treasurer is produced establishing such fact.

The first part of this objection has already been considered above. If a corporation contracts within its powers, whether all the formalities are observed or not, the contract is binding and the corporation becomes liable. *Campbell v. Community of Sisters of Charity* (1); *Clark v. Guardians of Cuckfield Union* (2).

Can it be legally and honestly contended that the city of Hull, relying on specific clauses of its charter, could always defeat the payment of its liabilities by refusing to make appropriation for its just debts and further by the refusal of its city treasurer to give the certificate above mentioned? Acting in this irregular manner by its abstention in voting the necessary appropriation or credits, could the city free itself from its liability to those it contracts with? Contending as the defendant does would not be giving to the act of the legislature that construction and interpretation that would ensure the attainment of the object of the act according to its true intent, meaning and spirit. These stringent clauses of the charter are enacted to protect the municipality, the citizens, against any agreement, contract or dealing made by some unauthorized official and does not apply to cases where a contract has been regularly entered

(1) [1910] 20 Ont. L.R. 467.

(2) [1852] 21 L.J.Q.B. 349.

into by the municipality in the manner provided by its charter.

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The defendant cannot on the one hand with all due formalities pass resolutions approving of the contract (section 392a), the scope of the commission,—sit on the commission, sign its report, accept copies of the report and plans, use the same, take all benefits derived therefrom, and on the other hand, when the time for payment comes, ignore its liabilities and refuse on mere technical grounds to provide for the payment of the same.

A good and valid contract has been entered into, the contract has been executed and a right of action has arisen therefrom.

Thibault v. City of Montreal (1); *La Ville d'Iberville v. Banque du Peuple* (2); *Corporation Notre Dame du Bonsecours v. Bessette* (3); *Campbell v. Community & Sisters of Charity (ubi supra)*; *Clark v. Guardians of the Cuckfield Union (ubi supra)*; *Breton v. Corporation de St-Michel* (4); *Kerr v. Town of Petrolia* (5); *Neelon v. Corporation of Thorold* (6).

There will be judgment ordering and adjudging that the plaintiff recover from the defendant the sum of \$6,560.32, with interest as above mentioned. The whole with costs against the defendant.

Judgment accordingly.

(1) [1898] Q.R. 14 S.C. 151.

(2) [1895] Q.R. 4 Q.B. 268.

(3) [1898] Q.R. 9 Q.B. 423.

(4) [1893] Q.R. 4 Q.B. 484.

(5) [1921] 51 Ont. L.R. 74.

(6) [1893] 22 S.C.R. 390.