

1923  
April 16.

W. LAMARRE & CIE LIMITEE.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Constitutional Law—Crown—Order in Council authorizing payment is binding agreement—Contract—intra vires.*

L. & Cie had a contract for the sale of coal to the Crown. At a given date the parliamentary appropriation for same became exhausted, payments to L. & Cie were stopped, and they were obliged to borrow from the bank to buy coal for the performance of their contract. For such accommodation they paid the bank \$1,724.97 in interest, and that amount they now claim from the Crown.

On December 17, 1921, an Order in Council was passed accepting liability therefor and directing payment thereof to L. & Cie, this the Crown by its defence claimed to be *ultra vires*, null and void.

*Held* that the Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown, and that suppliants were entitled to recover.

PETITION OF RIGHT to recover \$1,724.97 disbursed by suppliants for accommodation and which they were obliged to pay to the bank on account of the delay in payments by the Crown.

November 2, 1922, and March 27, 1923.

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

*J. Sinai Lamarre* for suppliant.

*L. A. Rivet, K.C.* for respondent.

The facts are stated in the reasons for judgment.

AUDETTE J. now (April 16, 1923) delivered judgment.

The suppliants by their Petition of Right seek to recover the sum of \$1,724.97, disbursed by them at the Bank for accommodation, as a result of the Crown delaying making payment for coal sold and delivered,—the annual appropriation for the payment of the same having been exhausted, before the end of the then current fiscal year.

The suppliants sold and delivered to the Crown, under contract, a large quantity of coal. Payments for delivery during the months of August, September, October and November, 1920, were made in due time. However, by December the appropriation for the fiscal year ending 31st March, 1921, for the payment of coal, became exhausted

and payment for the coal delivered had to be delayed until further fund had been provided by Parliament.

The suppliants who had to make monthly payments for the coal at the mine, became seriously handicapped, as the amounts required to cover the cost of the coal so delivered rolled up in large figures, and they had to seek help, by way of accommodation, at their bank, paying the sum of \$1,724.97 in interest, which they now claim upon the consideration that the Crown failed to pay for the coal under the usual custom of trade. They claim they should not be called upon to finance the Crown when its appropriations are exhausted.

For the recovery of such a claim, in the nature of interest or damages, a Petition of Right will not lie against the Crown. Interest is payable by the Crown only upon contract therefor or where its liability is fixed by statute. *Algoma Central Ry. v. The King* (1).

Section 48 of the Exchequer Court Act reads as follows:

(His Lordship here cites section 48 of the Exchequer Court Act).

The suppliants' claim for the recovery of monies in the nature of interest fails, unless the Crown admits liability.

However, the Executive, apparently moved by the equities of the claim, on the 17th December, 1921, passed an order in council (exhibits No. 2 and 14) reciting all the facts and circumstances of the case, accepting liability and directing the

payment of this sum of \$1,724.97, due by the Crown for interest on deferred payments on coal purchased for the firing-season, 1920-21, for the Ottawa Public Buildings.

The suppliants filed this order in council and relied upon the same for asserting their claim, stating that it was mailed to them with a covering letter signed by Mr. Boudrault. This letter after search being made, cannot be found.

The original contract for the coal in question has been duly executed and performed and the Crown passed this order in council which is a sufficient expression in writing

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(1) [1901] 7 Ex. C.R. 239.

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of an agreement to pay. *Millar v. The King* (1); affirmed on appeal to the Supreme Court of Canada (2).

The Crown can only speak with requisite authority through an order in council. It has done so in the present case, and it must be taken to have accepted liability under the circumstances of the case. *The King v. Vancouver Lumber Co.* (3); *The British American Fish Corporation v. The King* (4); *Livingston v. The King* (5); *Re Mackay and The Public Works Act* (6); *Stewart v. Jones* (7); *Casgrain v. School Commissioners* (8); *Gaston Williams v. The King* (9).

Therefore, there will be judgment adjudging and declaring that the suppliants are entitled to recover from the respondent the sum of \$1,724.97, with interest thereon from the date upon which the Petition of Right was left with the Secretary of State, pursuant to section 4 of the Petition of Right Act (*St. Louis v. The Queen* (10); *Lainé v. The Queen* (11) followed) and costs.

*Judgment accordingly.*

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| (1) [1921] 49 Ont. L.R. 93; 51 Ont. L.R. 246.           | (6) [1921] 58 D.L.R. 332.              |
| (2) [1922] 70 D.L.R. 254.                               | (7) [1900] 19 Ont. P.R. 227.           |
| (3) [1914] 17 Ex. C.R. 329; 41 D.L.R. 617; 50 D.L.R. 6. | (8) [1895] Q.R. 9 S.C. 225.            |
| (4) [1918] 18 Ex. C.R. 230; 59 S.C.R. 651.              | (9) [1922] 21 Ex. C.R. 370, at p. 372. |
| (5) [1919] 19 Ex. C.R. 321.                             | (10) [1895] 25 S.C.R. 649, at p. 665.  |
|   | (11) [1896] 5 Ex. C.R. 103.            |