

1912
June 13.

IN THE MATTER OF THE PETITION OF RIGHT OF
THE GRESHAM BLANK BOOK COM-
PANY, of Brooklyn, in the State of New
York, one of the United States of
America.....SUPPLIANTS:

AND

HIS MAJESTY THE KING..... .RESPONDENT.

Contract—Government Stationery Office—Recovery of value of goods sold and delivered and to be delivered—Executory contract—Breach—Construction of statute—The Public Printing and Stationery Act, R.S.C.(1906) chap. 80, sec. 24.

Goods ordered for the Department of Public Printing and Stationery by the Superintendent of Stationery must be ordered in strict conformity with the first clause of sec. 24 of R.S.C. 1906, chap. 80, and all persons dealing with officers of the Crown must be taken to have knowledge of the statute governing such dealings.

Where goods are ordered contrary to the formalities of section 24 but which have been received by the proper officers of the Crown for the use and benefit of the Crown, the Crown, in the special circumstances, will be held liable as upon an implied contract.

PETITION OF RIGHT for the recovery of the sum of \$6,047.08 for certain goods furnished and actually received, for goods shipped or in transit, and for breach of contract in dealings with the Department of Public Printing and Stationery at Ottawa.

The facts are stated in the reasons for judgment.

May 30th, 1912.

The case was heard at Ottawa.

R. G. Code, K.C., for the suppliants.

W. D. Hogg, K.C., for the respondent.

CASSELS, J., now (June 13th, 1912) delivered judgment.

This was a petition filed by the suppliants claiming the sum of \$6,047.08 for certain books and stationery

furnished for the Department of Public Printing and Stationery at Ottawa. The Crown pleads section 24 of the statute respecting the Department of Public Printing and Stationery, being chapter 80 of the Revised Statutes, 1906. The first part of that section provides:—

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“All purchases made by the Superintendent of Stationery as hereinbefore provided shall be so made upon requisition approved by the Minister or the King’s Printer.”

It is alleged by the Crown that the requisitions in question were not approved by either the Minister or the King’s Printer, and therefore there is no contract binding on the Crown.

The Crown also filed a counter-claim in which it alleges that the suppliants entered into a conspiracy with one Frank Gouldthrite, at that time Superintendent of Stationery, to defraud the Crown, and it asks for a refund of certain sums alleged to have been overpaid to the Gresham Blank Book Company. There is no evidence before me sufficient to sustain this counter-claim. It is attempted to be shown by the evidence of one John Hyde that the Government overpaid the suppliant the amount which would practically be paid as customs dues; in other words, the contention of Mr. Hyde apparently is, that purchasing goods in New York would be more expensive than the purchasing of the same class of goods in Toronto, because in addition to the purchase price paid in New York there would be certain customs dues under the Customs Tariff Act which should be added to this price.

In the first place, there is no evidence that there is any machinery in Canada which could turn out the same class of goods as have been manufactured by the suppliant company. It could hardly be expected that

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goods sold in New York could be sold for a less price than similar goods manufactured and sold in Canada. For years past to the knowledge of the Minister and the King's Printer goods of a similar kind have been purchased from the United States; and even in the evidence before me, Mr. Murphy points out that he visited New York and different places in the United States to see the establishments which were manufacturing goods for them. When the Customs dues are referred to as being lost, it is manifest that if the Department paid the dues these dues would simply go into another branch of the administration — and there is no doubt whatever that this idea of Mr. Hyde's is an after-thought to try and show some gross overpayment to the suppliant for the goods which the suppliant company had been furnishing.

A considerable quantity of the goods sued for have been received by the Department and used by them. The evidence of Mr. Parmelee, the King's Printer, shows the course of dealing that has taken place in the past. He was appointed King's Printer on the 1st February, 1909. Referring to Gouldthrite, he states that he was the man in charge of the Stationery Department and gave all the orders; that the goods were bought on his requisitions. In answer to a question, Mr. Parmelee states as follows:

“As a matter of Departmental practice all the standard supplies were bought in large quantities, usually by tender and contract, and were carried in stock. Then of course all the Departments need special things, and they were bought on his (Gouldthrite's) requisitions. We bought to the best advantage possible.”

The following questions and answers show the course of dealing:—

“Q.—As King’s Printer and in charge of this particular department, you knew all the years since your appointment took place that Gouldthrite was giving daily, and weekly requisitions for these particular goods?”

A.—Yes, for all kinds of goods.

Q.—You knew that?

A.—Yes.

Q.—And when the accounts would come in for these goods so ordered by Gouldthrite on his requisitions how were they paid?

A.—They were paid by the King’s Printer’s cheque and the account was signed by the Accountant. The Accountant signs first.”

In reference to the uncompleted orders he is asked:

“Q.—You must have known there were orders in process of completion?”

A.—Yes.

Q.—And that would be with respect to orders in the Petition of Right?

A.—Yes.”

I have carefully considered the various authorities cited in the argument and also certain other authorities not cited. I am of opinion that as to all the goods received by the Department it should be held that they were so received upon requisitions approved by the King’s Printer. There is nothing in the statute that requires the approval to be in writing, or even to be given at the time of making the requisition. is absolutely clear, I think, from the evidence of Mr. Parmelee, that, as to all the goods which were actually received into the Department, he knew that the requisitions had been made by Gouldthrite; and he subsequently approved of these requisitions and accepted the goods. I think the Crown is bound to pay for

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these goods. Even if all these facts were not present, it seems to me that, under the authorities, the Crown having received and used the goods is liable for their value. See *Wood v. The Queen* (1); *Bernardin v. The Municipality of North Dufferin* (2); *The Queen v. Henderson* (3); and *The Queen v. Woodburn* (4). In this latter case, while not deciding the point, the learned Judge who gave the judgment of the Supreme Court, states:—

“We have not here to deal with an executed contract, with a claim for goods sold or for work done and materials supplied in respect to which other principles may be applicable. It may possibly be that the Crown, like an individual, receiving the benefit of work or goods, may, notwithstanding the statute, be bound to recoup the person from whom the benefit has been received.” (5)

The case of *Young v. Leamington* (6) was strongly relied upon by Mr. Hogg, but it was based upon a statute entirely different from the one in question in this case.

I am therefore of opinion first, that it should be held that the goods which have been received by the Department, should be treated as having been received upon the requisition of the Superintendent, and approved of by the King’s Printer; and secondly, that if it is necessary, the Crown should be liable as upon an implied contract.

As to goods not received, I am forced to the conclusion that the suppliants have no right to recover. I have to take the statute as it reads. The statute only authorizes the Superintendent to make purchases upon requisition approved by the Minister or the King’s Printer.

(1) 7 S.C.R. 645.
 (2) 19 S.C.R. 581.
 (3) 28 S.C.R. 425.

(4) 29 S.C.R. 112.
 (5) 29 S.C.R. 122.
 (6) 8 A.C. 517

The *Woodburn* case referred to shows that all persons dealing with officers of the Crown, must be taken to have knowledge of the statutes. Now, under this clause it seems to me that the Superintendent of Stationery would have no power to enter into contracts unless with the approval of either the Minister or the King's Printer. Evidence has been given before me both by Mr. Murphy and Mr. Parmelee that they never approved of these requisitions for goods not received. They are executory contracts, and in my opinion cannot be enforced, as they were not entered into as required by statute.

No doubt the parties can agree upon the amounts for which the suppliants should be paid under this judgment; if not, the matter can be spoken to. I think the suppliants are entitled to their costs of the action and of the counter-claim.

Judgment accordingly.

Solicitors for Suppliants: *Code & Burritt.*

Solicitor for Respondent: *J. R. Osborne.*

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