

IN THE MATTER OF THE PETITION OF RIGHT OF

WILLIAM DOUGLAS MAY, et al. . . . SUPPLIANTS;

AND

HIS MAJESTY THE KING RESPONDENT.

1913
June 2

*Contract—Statutory Formalities—Non-compliance therewith—Quantum meruit—
Constructive delivery and possession—Constructive approval.*

According to the true intent, meaning and spirit of section 24 of the *Public Printing and Stationery Act* (R.S.C. 1906, Chap. 80) such section is a precautionary measure to safeguard and protect the State. In the absence of a strict compliance with the formalities prescribed thereby it must be held that no legal contract can obtain between the Crown and a subject, and the only claim which can be entertained for the right of recovery of goods delivered would be that based not on an executed contract, but rather as upon a *quantum meruit*.

2. Specific approval by the Minister or the King's Printer of each requisition is essential under the statute.
3. The Crown will not be held to be constructively in possession of goods, nor will goods be held to be constructively delivered, or requisitions constructively made, upon an informal contract, because the Crown cannot be prejudiced by the unauthorized acts or laches of any of its officers.

PETITION OF RIGHT for the recovery of the sum of \$25,921.91 for goods sold and delivered during 1910, to the Department of Public Printing and Stationery, one of Departments of the Government of the Dominion of Canada.

The facts are stated in the reasons for judgment.

May 22nd, 1913.

The case was heard at Ottawa.

R. C. Smith, K. C., and *W. G. Pugsley* for the suppliants contended that it was open to the Court to put such a construction upon the contract of the parties as would bring the contract within the requirements of the *Public Printing and Stationery Act*, (R. S. 1900.

1913
 MAY
 v
 THE KING.
 Argument
 of Counsel.
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c. 80, sec. 24). The *Gresham* case (1) decides that the statute does not require any special form or manner of approval of requisitions by the King's Printer, and so we submit that such approval can be implied from the conduct of the parties in the present case. The price of the goods that have been received and accepted by the Crown is recoverable under the decision in the *Gresham* case.

With respect to the goods shipped from New York to the Government for which the Crown has held the bills of lading for three years and more, but refuses to accept the goods, we say that the Crown by retaining the bills of lading, by going to the Customs warehouse and opening the parcels and inspecting them, must be held to have taken possession and delivery of the goods. So long as the Crown holds the bills of lading we cannot not exercise any acts of ownership over the goods. They are in the possession of the Crown, and in justice and fair dealing we should be paid for them.

They cited *Fisher v. Samuda* (2); *Couston v. Chapman* (3); *Grimoldby v. Wells* (4); *Hopkins v. Appleby* (5).

W. D. Hogg, K.C., for the respondent, contended that it was clear that with respect to the goods which the Crown refused to accept there was no approval by the Minister or the King's Printer of the requisitions. That is a statutory condition precedent to the suppliants' right to recover the price of the goods. He relied on *Gresham v. The King* (6); *Henderson v. The Queen* (7).

AUDETTE, J., now (June 2nd, 1913) delivered judgment.

(1) *Ante* p. 236;

(2) (1808) 1. Camp. 190;

(3) (1872) 2 H. L. Sc. 250;

(4) (1875) L.R. 10 C.P. 391;

(5) (1816) 1 Stark. 477.

(6) *Ante* p. 236,

(7) (1897) 6 Ex. C.R. 39. 28 S.C.R. 425.

This Petition of Right is brought, by the suppliants, to recover from the respondent the sum of \$25,921.91, for in part a certain quantity of goods, wares and merchandise alleged to have been sold and delivered, between the 1st January and the 1st July, 1910, to the Department of Public Printing and Stationery, one of the Departments of the Government of the Dominion of Canada, at the instance and request of the said Department and for the prices then agreed upon.

The suppliants further allege that between the 1st January and 1st June, 1910, the respondent by special written orders requested them to furnish a certain other quantity of goods, wares and merchandise of a special quality for prices agreed upon; that the said goods were all manufactured and ready for shipment and delivery at the times ordered and agreed upon, but that the respondent refuses to accept or receive the said goods, although duly tendered by the suppliants.

The respondent at bar in substance denies the existence of any legal contract between the parties, relying on section 24 of the *Public Printing and Stationery Act* (1), which requires that all purchases made by the Superintendent of Stationery shall be so made upon requisition, approved by the Minister or the King's Printer.

All requisitions and orders made to the suppliants for the supply of the said goods were so made by the Superintendent of Stationery (Gouldthrite) without the approval of the Minister or the King's Printer.

It is, however, true the Superintendent had been in the habit, in direct contravention of the statute, of ordering goods without such approval during a long period previous to the time in question in this case.

1913
MAY
v.
THE KING.
Reasons for
Judgment.

(1) R. S. C. 1906, chap. 80.

1913
 MAY
 v.
 THE KING.
 Reasons for
 Judgment

Mr. Parmelee, the King's Printer, who was heard as a witness in this case, says in that respect it had been the practice, down to three years ago, for the Superintendent to send these orders "*off his own bat.*"

However true it may be that the Superintendent had been for years in the habit of ordering goods "*off his own bat,*" and however forcible the appeal on that ground may be in the case at bar to one's sense of justice, to apply the rule which would govern at common law as between subject and subject, we are face to face with the statute, and a contract to be valid under the circumstances must be made in the manner provided by such statute.

The interpretation which should be given to the section in question is to be found in the very spirit of section 15 of *The Interpretation Act* (1), which says in substance that "every Act and every provision and enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything which Parliament deems to be for the public good, or to prevent or punish the doing of anything which it deems contrary to the public good; and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment, according to its true intent, meaning and spirit."

What, in the present case, is "the intent, meaning and spirit" of section 24 of *The Public Printing and Stationery Act*, if not a precautionary measure to safeguard and protect the State, representing the interest of the public at large, against any malversation of the officers of the Crown? The policy of the section is obviously not to leave the ordering of such goods in such magnitude to one officer alone,—the control being

(1) R. S. C. 1906, chap. 1.

given to two officers, one checking the other for greater security,—and the protection of the public moneys.

The suppliants are presumed to have known the law, and under the authority of *The Queen v. Woodburn* (1) they must be held to have known that Gouldthrite exceeded his authority and that they supplied the goods at their peril. The law requires the approval by either the Minister or the King's Printer, and no such approval appeared on the orders signed by the Superintendent. Would it not suggest itself to the mind of the ordinary prudent merchant dealing under such circumstances, to enquire whether the officer he was dealing with was vested with the proper authority to bind the Government?

It cannot be said that the King's Printer by his conduct in allowing the Superintendent to carry on the business, as he did, and making the requisitions "*off his own bat*" made such requisitions, or orders any better. They were not legal, not being made with the proper statutory authority, and because such defect was in certain cases cured by the payment of the goods, it does not give a legal character to those outstanding.

The statute (2) requires the specific approval of each requisition. A general approval, or the giving to Gouldthrite the general authority to purchase without the approval of the Minister or the King's Printer, would amount to a delegation of power which cannot be given in face of the statute.

Therefore the incompetency of the Superintendent to enter into a valid contract on behalf of the Crown is obvious, and in view of the above mentioned section 24, the necessary conclusion which must be arrived at is that no contract existed in point of law.

We have in the present case goods distributed, under respondent's Exhibit "A," in five different classes, viz:

(1) 29 S.C.R. 122.

(2) R. S. C. 1906, 80, sec. 24.

1913
 MAY
 v.
 THE KING.
 Reasons for
 Judgment.

1. Goods taken into stock, but not paid for.
2. Goods passed the Customs, but not taken into stock.
3. Goods not received at the Bureau and not passed through Customs.
4. Goods passed through Customs and returned to railway company.
5. Goods still in the hands of the suppliants, but ready to be shipped, and for which invoices and bills of lading have been sent to the Superintendent.

Under the decision of Mr. Justice Cassels, in the case of *The Gresham Blank Book Company v. The King*, (1) and the cases therein cited, both at trial and under a subsequent order, the suppliants are clearly entitled to recover the value of the goods mentioned in classes one, two and four. The Crown, in respect of these three classes, received the goods or assumed ownership thereof.

Coming to the goods mentioned in class No. 3, it is contended by the learned counsel for the suppliants that the goods in question were to be shipped f. o. b., New York, the freight to be paid at Ottawa and not by the suppliants; that the bills of lading for such goods were sent to the Government Stationery Department with the invoices in each case, and that as the bills of lading have remained in the hands of the Department all this time, the Crown thereby assumed complete possession of the goods. He further adds in support of this contention, that while the goods were at the railway station or warehouse, an officer of the Crown, with the special leave and permission of the Minister of Customs, opened the parcels, checked and counted the merchandise, and thereby took constructive possession of the same.

(1) *Ante*, p. 236.

The fallacy of this argument lies *in limine*. Had there been a contract in existence, as alleged, under which the goods had been shipped, the situation would very likely be as he contends. But it must be found that in the present case that at no time there existed a valid contract, and that moreover the right of the suppliants to recover for the goods in classes 1, 2 and 4, under the authority of the *Gresham* case and the several well known cases cited in support of it, such as *Wood v. The Queen*, (1); *The Queen v. Henderson* (2); *The Queen v. Woodburn*, (3); and *Hall v. The Queen*, (4); is a right to recover based, not on an executed contract, because there is no contract extant, but as upon a *quantum meruit*, under the circumstances there stated, where the Crown received the goods among its stock and received full benefit thereof. As already intimated at the trial, the dumping of goods into a person's yard, followed by the transmission of the bills of lading, will not act as a constructive delivery of the goods, for which the owner of the yard would become liable, because the bills of lading found their way into the hands of the owner of the yard. No such doctrine would obtain as between subject and subject where there is no valid contract, and much less so as against the Crown, and in the present case the reason is too obvious. It would be taking a rather abnormal view of the matter to say that because the bills of lading are transmitted to an individual, the latter, without any legal request on his behalf to supply the goods, or any contract, would become vested with their ownership and liable therefor.

It is true the bills of lading found their way into the hands of the Department and remained there after the letter of the 20th June cancelling all of Gouldthrite's

1913
MAY
v.
THE KING.
Reasons for
Judgment.

(1) 7 S. C. R. 645.

(3) 29 S. C. R. 112.

(2) 28 S. C. R. 425.

(4) 3 Ex. C. R. 373.

1913
 MAY
 v.
 THE KING.
 Reasons for
 Judgment.

orders; but they were, so to speak, impounded and used for the purposes of the investigation which was being carried on by the Minister. Had these bills of lading been unduly retained by the officer of the Crown, that would not make it liable—such a holding would be subversive of the legal doctrine that the Crown cannot be prejudiced by the laches of any of its officers. The acts of its officers cannot estop it from invoking its paramount privilege, and relying on the fundamental fact of the want of existence of any legal contract (1).

We have it clearly spread upon the record by the evidence of both the Minister and the King's Printer, that neither of them did ever approve of any order or requisition for the goods in question in this action. The statute (Sec. 24) requires the approval of either of these gentlemen to make an order or requisition valid; failing to have such approval, the requisition or order must be held illegal, and of no effect, as a contract.

As far back as the year 1669, *Twisden, J. in Maleverer v. Redshaw*, (2) said:

"I have heard Lord Hobart say upon this occasion, "that because the statute would make sure work, and "not leave it to exposition what bonds should be taken "therefore it was added, "that bonds taken in any "other form should be void;" for, said he, "the statute "is like a *tyrant*; where he comes he makes all void; but "the common law is like a *nursing father*, makes void "only that part where the fault is, and preserves the "rest."

Whatever might be the result, under the circumstances of this case, as between subject and subject at common law, we have here only the "*tyrant*," the statute, which cannot be overcome. The Crown is not liable for the goods mentioned in class number three.

(1) Robertson's *Civil Proceedings by and against the Crown and Departments of the Government*, at p. 577.

(2) 1 Mod. 35.

Coming now to the fifth class, which is composed of goods the suppliants contend had been ordered, in the manner already mentioned and which were ready for shipment, but were retained in their possession under the direction and order of the telegram of the 20th June, 1910, followed by the King's Printer's letter of the 22nd, advising them that all orders from Gouldthrite were cancelled. It is contended by the suppliants' learned counsel that with respect to the mourning paper mentioned in this fifth class, it stands under particular circumstances and that the King's Printer did approve of this order.

On this branch of the case we have the evidence of the King's Printer who says that he never authorized Gouldthrite to order this mourning paper from New York, and that it was a surprise to him to find that orders had been given to New York, because they had never done that class of business in New York. After consulting with Gouldthrite with respect to this paper, he sent through Gouldthrite, a man to Toronto and Montreal about the mourning paper, and he adds, as far as my special instructions were concerned, regarding this paper; my instructions to him were limited to Montreal and Toronto. While the King's Printer was aware, from the certified accounts which were placed before him when he signed the cheques, that in the past goods had been bought from the suppliants, he had a right to believe Gouldthrite would carry out his instructions and he never knew as a fact that Gouldthrite had sent requisitions to New York for this paper, and therefore he never authorized it. The King's Printer who is head of this Department, takes his employee into his confidence, instructs him to do a given thing in a specific manner and the employee goes beyond the scope of these instructions. Is it possible,

1913
MAY
v.
THE KING.
Reasons for
Judgment.

1913
MAY
v.
THE KING.
Reasons for
Judgment

under the circumstances, to find an approval or a constructive approval beforehand of what the employee could do in the matter? The answer must be in the negative.

Here again, for the reasons already mentioned, it must be found there existed no légal contract and the suppliants must fail with respect to this fifth class.

It was contended on behalf of the Crown that the prices charged were excessive, and where the suppliants succeed such prices should be reduced. Under the testimony of the several witnesses heard on this branch of the case, it must be found that the overwhelming weight of the evidence is that the prices were just, fair, and reasonable, under the circumstances.

The counterclaim set up by the defence must be dismissed with costs for want of proof.

Therefore the suppliants are entitled to recover the value of the goods mentioned in the classes, one, two and four above mentioned, and at the prices charged for, with the costs of the action.

Leave is reserved to the parties to apply to the Court for further directions, if they fail to agree in the adjustment of the amount for which judgment should be entered.

Judgment accordingly.

Solicitors for the Suppliants: *Smith, Markey, Skinner, Pugsley & Hyde.*

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