

IN THE MATTER of the Petition of Right of

THOMAS DUFFERIN PATTULLO.....SUPPLIANT;

1908

January 7.

AND]

HIS MAJESTY THE KING.....RESPONDENT.

*Contract—Yukon Territory Year-Book—Publication by private individual—
Authority of Commissioner to bind Dominion Government.*

The Commissioner of the Yukon Territory on the 24th November, 1903, had no authority to bind the Crown, as represented by the Government of Canada, by a contract entered into with a private individual for the printing and publication of a year-book relating to the Yukon Territory.

PETITION OF RIGHT for the recovery of money alleged to be due upon a contract entered into by the suppliant with the Government of Canada.

The suppliant by his petition of right set out the following facts:—

On or about the twenty-fourth day of November, 1903, the suppliant entered into an agreement in writing with the Commissioner of the Yukon Territory, acting on behalf of the Government of the Dominion of Canada, for the publication of one thousand copies of "The Yukon Year-Book of 1903," for the sum of four thousand dollars (\$4,000), which agreement was in the words and figures following:—

DAWSON, Y.T., Nov. 24, 1903.

"To Hon. F. T. CONGDON,

"Commissioner, Yukon Territory.

"SIR,—I beg to requisition for the following articles for department and public.

"1,000 copies Yukon Year-Book, 1903, copy for same to be furnished publisher complete within forty-five days

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from date hereof. Contract price, four thousand dollars, not to exceed 200 pages, \$4,000.00.

“(Sgd.) J. N. E. BROWN,
 “*Terr. Secretary.*”

“To T. D. PATTULLO,—

“Please supply the above articles and send account at the end of the month to the Government of the Yukon Territory, together with this requisition.

“(Sgd.) FRED. T. CONGDON,
 “*Commissioner.*”

Suppliant accepted this order set out in the preceding paragraph, and after he had commenced the work of publication, and incurred obligations in respect thereto, the Commissioner cancelled the said order, and notified the suppliant that the Government would not accept delivery of the books in question, and would refuse to pay therefor, and declined to supply the suppliant with the copy necessary to enable him to prepare the Year-Book in question; and, in consequence, thereof, suppliant suffered damages for expenses incurred in preparing said publication, and lost his profit on the contract so entered into.

He claimed \$2,000 damages.

By his defence the Attorney-General of Canada denied the authority of the Commissioner of the Yukon Territory on behalf of the Government of Canada to enter into the contract set up by the suppliant; that the contract upon its face did not show that it was made on behalf of the Government of Canada; that it was contrary to the provisions of R. S. 1886 c. 27, which required such work to be done by the Department of Public Printing and Stationery; and that Parliament had not voted money for the payment of any such claim.

The evidence adduced on behalf of the suppliant did not show that at the time of entering into the alleged

contract the Commissioner of the Yukon Territory had any authority to incur a liability on behalf of the Government of Canada in respect of the undertaking in question.

July 23rd, 1907.

The case was heard at Dawson, Y.T.

J. K. McRae, for the suppliant, contended that the Commissioner must be held to have acted for the Dominion Government and not for the Government of the Yukon in making the contract with the suppliant. Under the orders in council referring to the administration of the Territory "printing and stationery is a charge against the Federal Government."

Chapter 27 of R. S. 1886, sec. 5 (R. S. 1906, c. 80, s. 16) is merely directory in its provisions respecting public printing. It is not imperative, and could not be extended to prevent the making of a contract such as this in the Yukon Territory. (Cites *Leprohon v. City of Ottawa* (1); *Hardcastle on Statutes* (2); *Caldow v. Pixell* (3); *Johnson v. The King* (4); *Henderson v. The Queen* (5).

J. M. Carson followed on the same side, citing *Kenney v. The Queen* (6); *Boyd v. The Queen* (7).

G. F. Shepley, K.C., for the respondent;

The contract set up by the suppliant is directly in defiance of the provisions of the statute (R. S. 1906, c. 80, s. 16). Beyond this, there is the fundamental objection that the Commissioner lacked any authority to bind the Crown in right of the Dominion by any such agreement. There is nothing to show that the undertaking was referable to the Dominion Government. It was a Territorial matter. There are no funds available on the part of the Dominion Government to pay the claim.

Mr. McRae replied.

(1) 40 U. C. Q. B. 478.

(2) 3rd ed. pp. 259-268.

(3) 2 C. P. D. 562.

(4) 8 Ex. C. R. 370.

(5) 6 Ex. C. R. 39.

(6) 1 Ex. C. R. 68.

(7) 1 Ex. C. R. 186.

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Reasons for
Judgment.

THE JUDGE OF THE EXCHEQUER COURT now delivered judgment.

This case turns upon the question whether or not the Commissioner of the Yukon Territory had authority in respect of the contract he made with the suppliant to bind the Crown as represented by the Government of Canada. It is necessary in order to maintain the petition to answer that question in the affirmative and the burden of sustaining that proposition rests upon the suppliant, otherwise the respondent is entitled to the judgment of the court. For myself I have been unable to come to the conclusion that the Commissioner had, in respect to the matter in question, authority to bind the Crown as represented by the Government in Canada. I therefore am of opinion that the suppliant's petition fails.

There will be judgment that the suppliant is not entitled to any portion of the relief sought by his petition.

Solicitors for the suppliant : *Ritchie, Ludwig & Ballantine.*

Solicitor for the respondent : *E. L. Newcombe.*
