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MCLEAN AND ROGER *v.* THE QUEEN.

[E.C.] 1881

*Petition of right—Non-liability of the Crown on parliamentary printing contract—Departmental printing contract—Mutuality.*

June 18.

[S.C.] 1882

H. in his capacity of clerk of the joint-committee of both houses on printing, advertised for tenders for the printing, furnishing the printing paper, and the binding required by the parliament of the Dominion of Canada. The tender of the suppliants was accepted by

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the joint-committee and by both Houses of Parliament by adoption of the committee's report.

The suppliants, in their petition, contended that their tender and its acceptance by the joint-committee and both Houses constituted a contract between them and Her Majesty, under which they were entitled to do the whole of the printing required for the parliament of Canada ; and alleged that this obligation was broken and parliamentary printing given out to be done by others, whereby they were unjustly deprived of the profits they would have derived from the execution thereof by themselves, and they claimed compensation by way of damages.

To this petition the Attorney-General demurred, on the ground, *inter alia*, that H. in his capacity as clerk of the joint-committee, had no authority to bind the Crown, and no action upon such contract could be enforced against Her Majesty.

*Held*, per Henry, J. (in the Exchequer Court), that H., acting as clerk of the joint-committee, had sufficient authority to bind the Crown by the contract signed by him in such capacity ; that the contract so made was not for a part, but for the whole of the printing, &c., required for the Parliament of Canada ; and that the Crown was responsible in damages for the breach thereof. On appeal to the Supreme Court of Canada,—

*Held*, (reversing the judgment of the Exchequer Court), that the parliamentary printing was a matter connected with the internal economy of the Senate and House of Commons over which the Executive Government had no control, and that the Crown was no party to the contract with the suppliants and could not be held responsible for a breach of it.

Under 32-33 Vic., c. 7, which provides that the printing, binding and other like work required for the several departments of the Government shall be done and furnished under contracts to be entered into under authority of the Governor-in-Council after advertisement for tenders, the Under-Secretary of State advertised for tenders for the printing "required by the several departments of the Government." The suppliants tendered for such printing ; the specifications annexed to the tender, which were supplied by the Government, containing various provisions as to the manner of performing the work and giving of security. The tenders were accepted by the Governor-in-Council, and an indenture was executed between the suppliants and Her Majesty by which the suppliants agreed to perform and execute, &c., "all jobs or lots of printing for the several departments of the Government of Canada, of reports, &c., of every description and kind soever coming within the denomination of departmental printing, and all the

work and services connected therewith and appertaining thereto, as set forth in the said specification hereunto annexed, in such numbers and quantities as may be specified in the several requisitions which may be made upon them for that purpose from time to time by and on behalf of said several respective departments." Part of the departmental printing having been given to others, the suppliants, by their petition, claimed compensation by way of damages, contending that they were entitled to the whole of said printing.

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*Held:* per Henry, J., that there was a clear intention shown that the contractors should have all the printing that should be required by the several departments of the Government, and that the contract was not a unilateral contract but a binding mutual agreement.

On appeal to the Supreme Court of Canada, the judgment of the Exchequer Court was affirmed. See Can. S.C.R., vol. VIII., p. 210.