

IN THE MATTER of the Petition of Right of

GUNN & COMPANY, LIMITED.....SUPPLIANTS;

AND

HIS MAJESTY THE KING.....RESPONDENT.

1906  
Oct. 1.

*Intercolonial railway—Freight rates—Regular and special rate—Agent's mistake—Estoppel.*

A freight agent on the Intercolonial Railway, without authority therefor and by error and mistake, quoted to a shipper a special rate for hay between a certain point on another railway and one on the Intercolonial, the rate being lower than the regular tariff rate between the two places. The shipper accepted the special rate and shipped a considerable quantity of hay. Being compelled to pay freight thereon at the regular rate he filed a petition of right to recover the difference between the amount paid and that due under the special rate.

*Held*, that as the claim was based upon the negligence or laches of an officer or servant of the Crown, for which there was no statutory remedy, the petition must be dismissed.

**PETITION OF RIGHT** for the recovery of a sum of money alleged to be due to the suppliants from the Crown, representing an excess of money paid for the transportation of certain freight over the Intercolonial Railway.

The facts are stated in the reasons for judgment.

May 22nd, 1906.

The case came on for trial at Halifax.

*H. A. Lovett* for the suppliants;

*H. Mellish, K.C.*, for the respondent.

*Mr. Lovett* contended that the Crown was responsible for the error or mistake of its officers in a matter of contract. The suppliants acted in good faith, shipped the hay under the special rate, and ought not to be made to suffer the loss arising by reason of the mistake. (He cited *ex parte Dixon* (1).

(1) L. R. 4 Ch. D. 133.

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Mr. *Mellish* contended that the freight agent had no authority to make any special rate, nor did he attempt to do so. He merely gave information to the suppliants as to a rate, and his mistake was not an official act. There is no action against the Crown for damages for the mistake or misrepresentation of its agents. Such an action would not lie under similar circumstances against a private corporation. He cites *Lees v. The Ottawa and New York Railway Company* (1).

THE JUDGE OF THE EXCHEQUER COURT now (October 1st 1906) delivered judgment.

The petition is brought to recover the sum of nine hundred and sixty four dollars and five cents for alleged overcharges on the freight of a number of carloads of hay shipped from St. Simon, in the County of Bagot and Province of Quebec; and from St. Hyacinthe and St. Eugène, in that Province, to Sydney and to North Sydney, in the Province of Nova Scotia.

The claim arises in this way. The suppliants before shipping the hay mentioned made enquiries at the office of the Division Freight Agent of the Intercolonial Railway at Halifax as to what the rates of freight would be, and were given a rate of twenty cents per hundred pounds from St. Hyacinthe to Sydney and a rate of eighteen cents per hundred pounds from St. Simon Station (Bagot) to Sydney. The first of these rates applied also to shipment from St. Eugène, and both to shipments to North Sydney as well as to Sydney. Mr. Story, the Division Freight Agent of the Intercolonial Railway at Halifax had authority and it was his duty to quote freight rates over the Intercolonial, but he had no authority to make a special rate or to quote a rate that had not been authorized. In all the cases mentioned the rate quoted was less than the regular tariff

(1) 31 Ont. R. 567.

rates for hay between the respective places named, and it seems to have been the practice where the special rate was duly authorized to collect the regular tariff rate and then to make a refund to the shipper or person to whom the special rate was given. For instance, in this case the tariff rate on hay from St. Hyacinthe and St. Eugène to Sydney and to North Sydney appears to have been twenty three cents per hundred pounds, or in any event freight at that rate was collected from the consignees on hay shipped by or on behalf of the suppliants between these points. But there was at the time a duly authorized special rate of twenty cents per hundred pounds applicable to these shipments, and Mr. Story had authority to quote this rate. To this extent the respondent admits the validity of the suppliants' claim and offers to repay the amounts collected in excess of the special rate quoted by Mr. Story. That disposes of one hundred and thirty seven dollars and twenty six cents, parcel of the amount claimed, leaving the sum of eight hundred and twenty six dollars and seventy nine cents in controversy. The latter amount represents the alleged overcharges on hay shipped by or on behalf of the suppliants from St. Simon, Bagot County, a station on the Canadian Pacific Railway, to Sydney and to North Sydney on the Intercolonial Railway. The regular tariff rate on hay between these places was at the time twenty three cents per hundred pounds. The rate quoted by a clerk in Mr. Story's office, and confirmed by a note or letter signed by Mr. Story, was eighteen cents per hundred pounds. Mr. Story, however, had no authority to quote that rate and it was given through a mistake made by his clerk in not distinguishing between St. Simon in Rimouski County, a station on the Intercolonial Railway, and St. Simon, Bagot County, a station on the Canadian Pacific Railway. The rate of eighteen cents per hundred pounds quoted was the regular tariff rate at the time from St.

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Simon, Rimouski, to Sydney, and was given in error and by mistake as the rate from St. Simon, Bagot County. There was no intention of quoting a special rate from the latter place, and as stated Mr. Story had no authority to give a special rate therefrom.

It appears from the correspondence in evidence that the Minister of Railways and Canals at one time during the negotiations that preceded the filing of the petition was disposed to give effect to the rate erroneously quoted by his officer in case the suppliants supplied him with certain evidence that he deemed material from his standpoint. But nothing came of these negotiations, and at present both parties are standing on their strict legal rights, and the question to be decided is whether the Crown is answerable in such a case for the mistake made by its officer, and it seems clear that this question must be answered in the negative. It has been frequently held in this court that the Crown is not bound by estoppels; and that it is not responsible for the negligence or laches of its servants, except in cases where it has been expressly made liable by statute.

This principle is stated by Ritchie, C. J. in the case of *The Queen v. The Bank of Nova Scotia* (1), where, citing a passage which will be found in *Chitty's Prerogatives of the Crown*, page, 379, he is reported as follows:

“ it is unquestionable that no laches can be imputed  
 “ to the Crown, the interests of the Crown are certain  
 “ and permanent, and, it is said ‘ it must not suffer by the  
 “ ‘ negligence of its servants or by their compacts or com-  
 “ ‘ binations with the opposite party.’ There is no pre-  
 “ tence for saying that there ever was any waiver of the  
 “ prerogative rights of the Crown by the Deputy-Receiver  
 “ General, nor that he had any power or authority to  
 “ waive them, and if the officers of the Crown, in receiv-  
 “ ing the dividends, should have insisted on payment in

(1) 11 Can. S. C. R. p. 10.

“ full, and did not do so, this could not enure to the  
 “ detriment of the Crown. As the Crown cannot be  
 “ prejudiced by the misconduct and negligence of any of  
 “ its officers, so neither can an officer give consent that  
 “ shall prejudice the rights of the Crown. He could not  
 “ give an express consent that could prejudice the rights  
 “ of the Crown, still less, impliedly waive the Crown’s  
 “ rights.”

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See also *Rex v. The Bank of Montreal* (1).

There will be judgment for the suppliants for one hundred and thirty-seven dollars and twenty-six cents, and costs incurred prior to May 10th, 1906, when the offer by the respondent to pay that amount was made.

The respondent will have the costs subsequent to the date last mentioned.

*Judgment accordingly.*

Solicitor for the suppliants: *W. A. Henry.*

Solicitor for the respondent: *R. T. MacIlreith.*

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(1) 10 Ont. L. R. 117; and on appeal 11 Ont. L. R. 595.