

[E.C.] 1884

DUNN v. THE QUEEN.

Oct. 22. *Petition of Right—Liability of Dominion Government for provincial debt—*

[S.C.] 1885

*Account stated by order-in-council—Consideration—Assignment of claim—Demurrer.*

Nov. 16.

Prior to confederation one T. was cutting timber on territory in dispute between the old province of Canada and the province of New Brunswick, the former having granted him a license for the purpose. In order to utilize the timber so cut, he had to send it down the St. John river, and it was seized by the authorities of New Brunswick and only released upon payment of fines. T. continued the business for two or three years, paying fines to the

province of New Brunswick each year, until he was finally compelled to abandon it.

The two provinces subsequently entered into negotiations in regard to the territory in dispute which resulted in the establishment of a boundary line, and a commission was appointed to determine the state of accounts between them in respect to such territory. One member of the commission only reported, finding New Brunswick to be indebted to Canada in the sum of \$20,000 and upwards, and in 1871 these figures were verified by the Dominion Auditor.

Both before and after confederation T. frequently urged the collection of this amount from New Brunswick, with the object of having it applied to indemnify the parties who had suffered by the said dispute while engaged in cutting timber, and finally by an order-in-council of the Dominion Government (to whom, it was claimed, the indebtedness of New Brunswick was transferred by the B. N. A. Act), it was declared that a certain amount was due to T., which would be paid on his obtaining the consent of the governments of Ontario and Quebec therefor. Such consent was obtained and payments on account were made by the Dominion Government first to T. and afterwards to the suppliant, to whom T. had assigned the claim. Finally the suppliant, not being able to obtain payment of the balance due by said order-in-council, proceeded to recover it by petition of right, to which petition the defendant demurred on the ground that the claim was not founded upon a contract and was not properly a subject for petition of right.

*Held*, per Fournier, J. in the Exchequer Court (overruling the demurrer), that inasmuch as the order-in-council contained conditions to be complied with by T. and other interested parties, and these conditions were accepted and performed by them, a valid contract subsisted between the Crown, represented by the Dominion Government, and such parties; that the order-in-council operated as an account stated between the Dominion Government and the said parties; that the Crown had formally acquiesced in the transfer of T.'s claim to the suppliant by paying the suppliant large sums of money on account of the claim with knowledge of such transfer, and that the suppliant was entitled to proceed by petition of right for the recovery of so much of said claim as remained unpaid. On appeal to the Supreme Court of Canada,—

*Held*, reversing the judgment of Fournier, J. (Fournier and Henry, JJ. dissenting), that there being no previous indebtedness shown to T., either from the province of New Brunswick, the province of Canada, or the Dominion Government, the order-in-council did not create any debt between T. and the Dominion Government which could be enforced by petition of right. See Can. S. C. R., vol. XI., p. 385.

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