

O'BRIEN *v.* THE QUEEN.

[E.C.] 1877

Contract—Claim for extra work—Certificate of Engineer—Condition precedent—31 Vic., c. 12 (D).

Dec. 3.

[s.c.] 1880

Mar. 13.

By contract under seal, dated 4th December, 1872, the suppliant engaged with the Minister of Public Works, to construct, finish and complete for a lump sum of \$78,000 a deep sea wharf at the Richmond Station at Halifax, N. S., agreeably to the plans in the engineer's office, and specifications, and with such directions as would be given by the engineer in charge during the progress of the work. By the 7th clause of the contract, no extra work could be performed unless "ordered in writing by the engineer in charge before the execution of the work."

By letter, dated 26th August, 1873, the Minister of Public Works authorized the suppliant to make an addition to the wharf by the erection of a superstructure to be used as a coal-floor, for the additional sum of \$18,400. Further extra work, which amounted to \$2,781, was performed under another letter from the Public Works Department. The work was completed, and on the final certificate of the Government's engineer in charge of the works, the sum of \$9,681, as the balance due, was paid to the suppliant, who gave the following receipt, dated 30th April, 1875: "Received from the Intercolonial Railway, in full, for all amounts against the Government for works under contract, as follows: 'Richmond deep-water wharf works for storage of coals, works for bracing, wharf, re-building two stone cribs, the sum of \$9,681.'" The suppliant sued for extra work, which he alleged was not covered by the payment made on the 30th April, 1875, and also for damages caused to him by deficiency in, and irregularity of payments.

Held: (per Fournier, J.) That the suppliant was paid in full the contract price, and also the price of all extra work for which he could pro-

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duce the written authority of the engineer in charge; that all other work performed by the suppliant for the Government was either contract work within the plans or specifications, or work rendered necessary in consequence of his non-compliance with the conditions of the contract and specifications; and that the written authority of the engineer in charge, and his estimate of the value of the work, were conditions precedent to the right of the suppliant to recover payment for any extra work.

On appeal the Supreme Court of Canada the judgment of the Exchequer Court was affirmed. See Can. S. C. R., vol. IV., p. 529.