

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of The
Queen v. Demers, from the Court of Queen's
Bench for Lower Canada, Province of
Quebec; delivered 9th December 1899.*

Present at the Hearing :

THE LORD CHANCELLOR.

LORD WATSON.

LORD MACNAGHTEN.

LORD MORRIS.

LORD DAVEY.

SIR HENRY STRONG.

[*Delivered by Lord Macnaghten.*]

In August 1897 the Respondent Demers carrying on business in the city of Quebec as a printer under the firm of J. L. Demers et Frère sued Her Majesty the Queen by a Petition of Right claiming \$85,000 as damages for breach of a contract in respect of the printing and binding of certain public documents.

It seems that on the 27th of January 1897 the Lieutenant-Governor of Quebec had approved a Report of the Committee of Council stating that the Provincial Secretary recommended that the work in question should be entrusted to the Respondent's firm for a term of eight years to run from the 1st of January 1897 at the prices which that firm had received for the same work since 1892 and that he should be authorised to sign a contract to that end subject as to its

details to the approval of the Lieutenant-Governor in Council.

On the 18th of March 1897 a contract was signed purporting to be made between Her Majesty represented by the Provincial Secretary authorised in that behalf by the Order in Council of the 27th of January 1897 of the first part and the Respondent Demers of the second part. The contract declared that the Respondent covenanted to execute for Her Majesty the Queen during the term of eight years beginning from the 1st of January 1897 the printing and binding of the public documents specified in the body of the instrument and that the contract was made for the prices and considerations expressed in the Schedules and Table annexed thereto.

No Order in Council was passed approving this contract or its details as contemplated by the Order of the 27th of January. The Legislature of Quebec had been dissolved on the 27th of February 1897 before the contract was signed. The elections took place shortly afterwards. The Government was defeated and resigned and on the 28th of May 1897 their successors came into office.

The fiscal year of the Province ends on the 30th of June. On the 30th of June 1897 a report of the Committee of Council was approved by the Lieutenant-Governor stating that the Provincial Secretary had reported to the effect that the contract was not binding on the Government and that he proposed that it should be cancelled.

The Respondent was advised of the cancellation of the contract. No work was given to him after the 30th of June 1897. All the work executed by him up to that day was paid for according to its value as measured by the contract prices.

After protesting against the action of the Government the Respondent presented his Petition of Right which was duly filed and filed on the 31st of August 1897.

In the Superior Court judgment was delivered by Larue J. on the 21st of February 1898. Holding that there had been a breach of contract on the part of the Government his Honour awarded damages against the Crown for the fiscal year 1897-98 for which year the vote of supplies for printing had been passed in January 1897. But he dismissed the claim for damages in respect of the subsequent years on the ground that a contract made by the Crown for the payment of money extending over future years cannot bind the Crown in default of legislative ratification.

On appeal to the Court of Queen's Bench the learned Judges delivered judgment on the 25th of June 1898. They confirmed so much of the judgment of the Superior Court as dealt with the damages for the year 1897-98 but varied the judgment by reserving to the Respondent all his remedies as to the damages which might accrue to him for the later years of the contract.

The judgment of Larue J. and the judgments of the learned Judges of the Court of Queen's Bench deal at some length with several questions of constitutional interest which were raised in the pleadings. Their Lordships do not propose to deal with these questions or with the question whether the alleged contract was of any validity without the confirmatory Order in Council contemplated by the Order of the 27th of January 1897. It appears to their Lordships that assuming the contract to be a good and valid contract the Respondent has not shown that there was any breach on the part of the Government.

The contract purports to be made between Her Majesty the Queen represented by the Provincial Secretary and the Respondent Demers. It does not purport to contain any covenant or obligation of any sort on the part of the Crown. The Respondent undertakes to print certain public documents at certain specified rates. For all work given to him on the footing of the contract the Government was undoubtedly bound to pay according to the agreed tariff. But the contract imposes no obligation on the Crown to pay the Respondent for work not given to him for execution. There is nothing in the contract binding the Government to give to the Respondent all or any of the printing work referred to in the contract, nor is there anything in it to prevent the Government from giving the whole of the work or such part as they think fit to any other printer.

This point which in their Lordships' Judgment is fatal to the Respondent's claim was raised in the pleadings and apparently presented to both the Courts below. But it seems to have been lost sight of in the discussion of the more interesting questions which were debated in the course of the litigation.

A preliminary objection was raised by the Respondent to the effect that no appeal lay to Her Majesty from the decision of the Court of Queen's Bench on a Petition of Right. This point was disposed of during the argument and it is enough to say that it appears to their Lordships to be wholly untenable.

Their Lordships will therefore humbly advise Her Majesty that the Appeal ought to be allowed, the decisions of the Court of Queen's Bench and the Superior Court reversed, and the Petition of Right dismissed with costs in both Courts.

The Respondent must pay the costs of the Appeal.
