

Privy Council Appeal No. 125 of 1913.

**Alberto Dini, since deceased (now represented
by Dame Malvina Larose)** - - - *Appellant,*

v.

Joseph Brunet - - - *Respondent.*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC.
(APPEAL SIDE.)

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 22ND MAY 1914.

Present at the Hearing:

LORD DUNEDIN.

LORD PARKER OF WADDINGTON.

LORD MOULTON.

LORD SUMNER.

[Delivered by LORD DUNEDIN.]

The respondent being interested in some stone quarries situate a few miles distant from a portion of the line of the Canadian Pacific Railway Company was anxious to have a branch line constructed to the said quarries. By the Canadian law subsidies are paid by the Federal Government under certain conditions for the construction of railway lines. The eventuality of the matter was as follows: The Canadian Pacific Railway Company procured the passing of the necessary Acts of the legislature for the construction, and arranged with the Government to construct the desired railway. Mr. Brunet contracted on certain terms—one of which was that he was to receive the Government subsidy to make the line for the Canadian Pacific Railway Company. Mr. Brunet sub-contracted the line to the appellant Mr. Dini. Mr. Dini

was to be paid a lump sum and extras at a certain rate. The line was constructed, and Mr. Dini rendered his account to Mr. Brunet for \$55,423, being \$37,500 for the lump sum, and \$17,923 for extras. Mr. Brunet disputed the extras, and the matter was settled by an agreement, which forms the basis of the matter in dispute.

The agreement was as follows, the material parts alone being quoted :—

“ Que le compte de la partie de seconde part pour tels travaux est de cinquante-cinq mille quatre-vingt-trois dollars et soixante-quatorze centins suivant état actuellement en possession des parties aux présentes.

“ M. Brunet s'engage à payer à M. Dini, à tout événement, la somme de (\$9,600.00), équivalent au montant du subside additionnel à être payé par le gouvernement fédéral pour les trois premiers milles du dit chemin de fer. (Si le compte ci-dessus mentionné de M. Dini est réduit par le gouvernement fédéral ou ses officiers, et si à cause de cette réduction le subside additionnel de \$3,200.00 par mille n'est pas payé en plein, mais se trouve réduit, cette réduction sera supportée par M. Dini.)

“ Cet exposé fait, il est convenu, et M. Dini consent à cela, que si le parlement fédéral votait un subside pour le quatrième mille et une fraction du dit chemin de fer, pour lequel mille et une fraction aucun subside n'est encore voté, le premier subside appartiendra à M. Brunet, et le subside additionnel appartiendra à M. Dini.

“ A raison de ce que ci-dessus M. Dini donne à M. Brunet quittance pour toute réclamation qu'il peut avoir contre lui à raison du contrat qu'il a fait avec lui pour la construction du dit chemin de fer Staynerville Brauc.

“ Tous les paiements à être faits seront faits à la Banque d'Hochelaga, au compte de M. Dini.

“ Le paiement à faire par M. Brunet à raison du subside additionnel pour les trois premiers milles devra être faite dans six mois de cette date.”

Before going further it is necessary to revert to the matter of the subsidies.

According to the bargain between the Government and the Canadian Pacific Railway Company the subsidy was payable in two divisions, first, a payment of \$3,200 per mile on each mile

or fraction of completed railway; second, a payment of the half of such sum per mile as the completed railway cost in excess of \$15,000 per mile, with a limitation in any event to \$3,200 per mile. It should further be explained that as originally authorised the railway was three miles in length; it was subsequently increased to a length of four and a fraction.

The appellant who is the representative of Mr. Dini sues Mr. Brunet, the respondent, for payment of \$9,600. Originally a claim was made for a further sum in connection with the extended portion of the railway, but that claim has been abandoned.

The respondent resists payment, alleging that as a matter of fact the additional subsidy in respect of the three miles has never been received by him.

The facts as to this are as follows. The Canadian Pacific Railway Company duly approached the Government for payment of the subsidy. The Government admitted the claim to and paid the original, or first part of the subsidy, viz., of \$3,200 per mile. But as regards the additional subsidy they decided that the Canadian Pacific Railway Company had failed to show that the cost of the line exceeded \$15,000 per mile. The reason why they failed to show this was because the statements they put in were not properly vouched. Now the statements they put in were statements of the cost of the line divided into three heads. Head 1, was sums paid by the Canadian Pacific Railway Company amounting to \$15,000 odd; Head 2, sums paid by Mr. Dini amounting to \$55,423.74 and Head 3, sum paid by Mr. Brunet amounting to \$25,000 odd. It will be observed that the sums paid by Mr. Dini are exactly the figures brought out by Mr. Dini's account rendered to Mr. Brunet. The Government official held that so far as the

sums paid by the Canadian Pacific Railway Company were concerned, they were, in great part, though not entirely established, but that as regards the sums paid by Mr. Dini and Mr. Brunet, they were really not established at all. The whole question therefore turns on the true meaning of the agreement. The appellant argues that there is an absolute undertaking on the part of the respondent to pay \$9,600, and that that obligation is only elided if the default of the subsidy is shown to be due to the cutting down of Mr. Dini's account, and to that alone, and that as the failure of the subsidy was just as much to be attributed to the non-substantiation of Mr. Brunet's account—to say nothing of that of the Canadian Pacific Railway Company—the clause relieving Mr. Brunet of the payment does not apply.

It is first to be observed that it is obvious that the parties to the agreement knew perfectly well that Mr. Dini's account as rendered was, along with the others, to serve as forming one of the ingredients of the grand total of expenditure which alone could justify the exaction of the additional subsidy; and they knew that that account would be subject to investigation and audit by the Government. Keeping this in view their Lordships go so far with the appellant in thinking that there is to begin with an engagement on the part of Mr. Brunet to pay \$9,600 and that the onus therefore lies on him to show that he is within the exception. It seems to them, however, that he has *primâ facie* discharged that onus when he has shown, first, that Mr. Dini's account has, in fact, been "reduit" by the Government officials (in point of fact it was "cut down" to nothing, being *in toto* disallowed) and, second, that in the result no subsidy was paid. It might have been possible (if the facts had permitted of such a result) for the appellant

to have again turned the tables by showing that it was the non-substantiation of the other accounts, and not of that of Mr. Dini, that caused the Government officials to refuse to pay. Such a proceeding was, however, on the facts as known quite impossible, and it therefore seems to their Lordships that the respondent has established that he is within the words of exemption.

Their Lordships are accordingly of opinion that the judgment of the Appeal Court of the Province of Quebec was right, and they will humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

ALBERTO DINI, SINCE DECEASED
(NOW REPRESENTED BY DAME
MALVINA LAROSE)

v.

JOSEPH BRUNET.

DELIVERED BY LORD DUNEDIN.

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