

THE GILBERT BLASTING AND }  
DREDGING COMPANY (SUP- } APPELLANTS;  
PLIANTS) ..... }

1902

AND

\*Dec. 11

HIS MAJESTY THE KING (RE- }  
SPONDENT) ..... }

RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

*Contract—Public work—Abandonment and substitution of work—Implied contract.*

The suppliants contracted with the Crown to do certain work on the Cornwall Canal the contract providing that they should provide all labour, plant, etc., for executing and completing all the works set out or referred to in the specifications, namely, "all the dredging and other works connected with the deepening and widening of the Cornwall Canal on section no. 8 (not otherwise provided for)" on a date named; "that the several parts of this contract shall be taken together to explain each other and to make the whole consistent; and if it be found that anything has been omitted or misstated which is necessary for the proper performance and completion of any part of the work contemplated the contractors will, at their own expense, execute the same as though it had been properly described;" and that the engineer could, at any time before or during construction, order extra work to be done or changes to be made, either to increase or diminish the work to be done, the contractors to comply with his written requirements therefor. By sec. 34 it was declared that no contract on the part of the Crown should be implied from anything contained in the signed contract or from the position of the parties at any time. After a portion of the work had been done the Crown abandoned the scheme of constructing dams contemplated by the contract and adopted another plan the work on which was given to other contractors. After it was completed the suppliants filed a Petition of Right for the profits they would have made had it been given to them.

*Held*, affirming the judgment of the Exchequer Court (7 Ex. C. R. 221) that the contract contained no express covenant by the Crown to

\*PRESENT:—Sir Elzéar Taschereau, C.J. and Sedgewick, Girouard, Davies and Armour JJ.

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give all the work done to the suppliant and sec. 34 prohibited any implied covenant therefor. Therefore the Petition of Right was properly dismissed.

APPEAL from a judgment of the Exchequer Court of Canada (1) dismissing the suppliant's Petition of Right.

The suplicants, under contract with the Crown for constructing works in connection with deepening and widening the Cornwall Canal claimed the right to do all the work thereon and filed their Petition of Right for the profits they would have made on the construction of dams which was given to other contractors. The Exchequer Court held that they were not entitled to relief under the petition.

The material portions of the contract are sufficiently set out in the above head-note.

*Aylesworth K.C.* and *Belcourt K.C.* for the appellants.

*Newcombe K.C.*, Deputy Minister of Justice, was not called upon.

The judgment of the court was delivered by :

THE CHIEF JUSTICE (oral).—Notwithstanding the able arguments in support of the appeal that have been addressed to us, we are of opinion that it is impossible to hold that words can be found in this contract amounting to an express covenant by the Crown that the contractors must have been allowed to do all the work that had been given to Davis. Then under section 34 no such covenant by the Crown can be implied. We therefore dismiss the appeal with costs.

*Appeal dismissed with costs.*

Solicitors for the appellants: *Belcourt & Ritchie.*

Solicitor for the respondent: *E. L. Newcombe.*