1959
*Jan. 29
Feb. 26

MORRIS ROBERT PALMER and NATHAN PALMER, carrying on business under the name of HULL PIPE and MACHINERY COMPANY (*Petitioners*) ..... APPELLANTS;

AND

HER MAJESTY THE QUEEN (*Defendant*) ..... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Crown—Petition of right—Claim for breach of contract—Tenant of former owner remaining in occupation of expropriated Crown land—Nature of tenancy—Absence of authority of Governor in Council—Destruction of chattels on direction of Crown servant by independent contractor—Whether Crown liable—Civil Code, art. 1053—The Exchequer Court Act, R.S.C. 1927, c. 34, ss. 18, 19(b), (c)—The Public Works Act, R.S.C. 1927, c. 166, s. 18.

The petitioners, who were tenants of land subsequently expropriated by the Crown in 1947, remained in occupation after the expropriation and paid rent to the Crown. They claimed damages for an alleged breach of a covenant of peaceful enjoyment, and see *ante* p. 397) for destruction of their chattels on the direction of an officer of the Crown through a contractor. The petition of right was dismissed by the Exchequer Court.

Held: The petition should be dismissed.

There was no lease between the parties and no valid consent was ever given to bind the Crown. The authorization of the Governor in Council, which is an essential requisite for a valid lease entered into by a department of the Crown, was never obtained in this case. Moreover, the petitioners were notified several times to leave the premises which they were occupying from day to day, precariously and by mere tolerance. They were bound to leave at a moment's notice, and their refusal to vacate was marked with the utmost bad faith.

Neither s. 18 nor s. 19(*b*) and (*c*) of the *Exchequer Court Act*, as they stood prior to their amendment in 1949, had any application.

APPEAL from a judgment of Thorson P. of the Exchequer Court of Canada[1], dismissing a petition of right. Appeal dismissed.

R. Quain, Q.C., and *R. Quain, Jr.*, for the petitioners, appellants.

*PRESENT: Kerwin C.J. and Taschereau, Fauteux, Abbott and Judson JJ.

[1] [1951] Ex. C.R. 348, [1952] 1 D.L.R. 259.

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PALMER *et al.* v. THE QUEEN

P. Ollivier and *R. Tassé*, for the defendant, respondent.

The judgment of the Court was delivered by

TASCHEREAU J.:—I have today given my reasons why the appeal of the present appellants in another case against *Miron & Freres*[1] fails, and while the evidence is not identical, it is unnecessary to restate the salient facts. However, it may be stated that the appellants claim from the present respondent, the same amount of $33,540 which they claimed from Miron & Freres in the other case before the Superior Court of the Province of Quebec. The learned President of the Exchequer Court[2] dismissed the petition of right with costs, and I agree with the conclusions which he has reached.

It is first of all claimed that the payment by the apellants to the respondent of the rents, namely, $15 a month, for July, August and September, 1949, made them monthly tenants, and that they were entitled to a month's notice, and therefore should have had the enjoyment of the land until the end of September. I believe that this argument cannot support the claim of the appellants. Of course, if there is a breach of contract, a petition of right will lay against the Crown to recover damages, but here there was no lease between the parties and no valid consent has ever been given to bind the respondent. Section 18 of the *Public Works Act* says:

> 18. No deed, contract, document or writing in respect of any matter under the control or direction of the Minister shall be binding on His Majesty or be deemed to be the act of the Minister, unless the same is signed by him or by the Deputy Minister, and countersigned by the Secretary of the Department, or the person authorized to act for him.

Vide: *St. Ann's Island Shooting and Fishing Club Limited v. The King*[3], where it was held that the authorization of the Governor General in Council was an essential requisite for a valid lease entered into by a department of the Crown. Here, no such authority has ever been obtained.

Moreover, the appellants knew of the expropriation proceedings, they had been notified several times that they would have to leave the premises they were occupying

[1] [1959] S.C.R. 397.
[2] [1951] Ex. C.R. 348, [1952] 1 D.L.R. 259.
[3] [1950] S.C.R. 211, 2 D.L.R. 225.

from day to day, precariously and by mere tolerance. Under these conditions, they were bound to leave at a moment's notice. They in fact received several notices, and their refusal to vacate the property is marked with the utmost bad faith. Even after having been notified, and after having, at the request of their lawyer, obtained a few days delay to clear the way, they deposited some additional scrap, indicating their determination to scorn the notices they had received.

The other submissions of the appellants based on old ss. 18 and 19 (*b*) and (*c*) of the *Exchequer Court Act,* have been rightly ruled out by the learned trial judge.

Under s. 18, the Exchequer Court has exclusive original jurisdiction . . . in all cases in which the land, goods or money of the subject, are in the possession of the Crown. This is not a case where the Crown *had possession* of land, goods or money belonging to the appellants. Not only did the Crown not have possession of these goods, but it requested several times that they be taken away from its premises. There was no actual possession and no possession in law within the meaning of the Act.

As to s. 19 (*b*) and (*c*), it seems sufficient to say that they do not apply. Section 19 (*b*) deals with the case of a subject whose property has been injuriously affected by the construction of a public work, and s. 19 (*c*) as it then was, is to the effect that the subject has a claim against the Crown arising out of any death or injury to the person or to property, resulting from the *negligence of any officer or servant of the Crown* while acting within the scope of his duties or employment.

Section 19 (*b*) does not apply, because no property belonging to the appellants has been injuriously affected by the construction of the Printing Bureau. Nor does s. 19 (*c*) apply. As pointed out in the Exchequer Court, there is no allegation of the negligence of any particular officer or servant of the Crown, but in any event, counsel for the appellants stated that the only suggested officers or agents were Miron & Freres, and they were independent contractors.

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Taschereau J.

The appeal fails and should be dismissed with costs.

Appeal dismissed with costs.

Attorneys for the petitioner, appellant: Quain & Quain, Ottawa.

Attorney for the defendant, respondent: A. Labbe, Buckingham.