

HIS MAJESTY THE KING.....APPELLANT;

AND

DOMINION BUILDING CORPORATION LIMITED (CLAIMANT) AND
JAMES L. FORGIE (ADDED AS A PARTY
CLAIMANT BY ORDER MADE BY THE
PRESIDENT OF THE EXCHEQUER COURT
OF CANADA ON THE 4TH MARCH, 1931.. } RESPONDENTS.

1931
*Nov. 11, 12.

1932
*Mar. 15.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Contract—Sale of land—Crown—Offer to the Crown represented by the Minister of Railways and Canals for Canada—Whether acceptance made, binding the Crown—Order in Council—Communications to offeror—Department of Railways and Canals Act, R.S.C., 1906, c. 35, s. 15—Alleged part performance by offeror—Whether time made of essence.

F. (the claimant's assignor, and added as party claimant in the proceedings), on July 27, 1925, sent to His Majesty the King, represented by the Minister of Railways and Canals for Canada, an offer to purchase certain land in the city of Toronto for \$1,250,000 cash, depositing \$25,000, and agreeing, upon acceptance of the offer, to pay the

*Present at hearing of the appeal: Anglin C.J.C. and Newcombe, Rinfret, Lamont and Smith JJ. Newcombe J. took no part in the judgment, as he died before the delivery thereof.

(1) [1892] A.C. 491.

(2) (1892) 61 L.J. Ch. 716.

(3) (1801) 1 Cranch, 103.

(4) *Chae Chan Ping v. United States*, (1889) 130 U.S.R. 581.

1932

THE KING
v.
DOMINION
BUILDING
CORPORATION
LTD.

balance of the purchase price at such time as possession "be given to (F.) not later than" September 25, 1925. In the offer F. agreed that upon his obtaining possession, on or before September 25, 1925, he would proceed with the erection of a 26 storey building upon said land and certain adjoining land. The offer provided that His Majesty, represented as aforesaid, should execute a lease of certain floors for 30 years upon terms set out. The offer stated: "This offer of purchase, if accepted by Order * * * in Council, shall constitute a binding contract of purchase and sale," subject to its terms. On July 29, 1925, an Order in Council was passed, which recited that the Committee had before them a report from the Minister of Railways and Canals representing F.'s offer, stating that "the Minister accepted said offer of purchase subject to the approval and authority of Your Excellency in Council," setting out in the main the terms of "the said offer of purchase, accepted as aforesaid," and recommending that authority be given for its acceptance. The Order in Council stated: "The Committee concur in the foregoing recommendation and submit the same for approval." There was evidence that F. received a certified copy of the Order in Council, but no evidence that any copy of it or the fact of its having been passed was transmitted to F. by the Minister or by anyone authorized to do so. Extensions of time were given to F., signed by the Deputy Minister, and the last one by letter of the Minister, of November 17, 1925, stating: "I have your letter * * * applying for a further extension of time within which to receive possession * * * and to make payment * * * and to perform * * * other details of the contract of purchase under your offer of purchase, dated July 27, 1925, and the acceptance thereof," and granting a further extension, but without waiver of rights, etc., "under and as provided for by the said contract should you fail to perform and carry out, within the hereby extended period, all the covenants and conditions which on your part, under and as provided by the said contract, were to be performed and carried out within the original period thereunder provided." In the present proceedings damages were claimed against the Crown for not carrying out the contract alleged by the claimant to have been made.

Held: No acceptance on behalf of the Crown communicated to F. by anyone having authority to do so, had been shewn; and, therefore, no contract binding on the Crown had been established. The Order in Council did not in itself constitute an acceptance. The acceptance referred to in the Minister's report set out in the Order in Council, if there was any such acceptance, was not in writing signed in compliance with s. 15 of the *Department of Railways and Canals Act*, R.S.C., 1906, c. 35, and therefore was not binding on the Crown. The Minister's letter of November 17, 1925, could not be taken as an acceptance by him of the offer, so as to constitute a contract; he was evidently under the impression that a contract existed, but had no intention by that letter of constituting a contract.

Held, further: The claimants could not succeed on the ground of part performance. Even if the doctrine of part performance could otherwise be invoked in this case, the acts of part performance alleged (the contracting by F. for the purchase of adjoining land to form part of the site of the proposed building, and payments on account thereof; the preparation of plans, etc., for the building, and contracting for its construction) were merely steps taken in order to be in a position to

make the offer and to carry it out if accepted, and would not amount to part performance of the alleged contract.

Held further that, when F. made his applications for extension and was given extension in the terms of the letters, time was made, by these extensions, of the essence of the contract, and, the purchase not having been completed within the extended period, the claim could not be sustained even if there were a contract.

The judgment of the Exchequer Court in favour of claimants was reversed, and the claim dismissed. There being no contract, claimants were held entitled to return of the deposit (but not as damages).

1932
THE KING
v.
DOMINION
BUILDING
CORPORATION
LTD.

APPEAL by the Crown from the judgment of Maclean J., President of the Exchequer Court of Canada, rendered the 4th March, 1931, holding that the claimants were entitled to recover damages from the Crown for breach of an alleged contract.

The claim for damages was made by the respondent Dominion Building Corporation Ltd., and was referred by the Acting Minister of Railways and Canals for Canada to the Exchequer Court. In his judgment the trial judge allowed a motion made by the claimant at the beginning of the trial for an order permitting the respondent Forgie, the claimant company's assignor, to be added as a party claimant, so that, if necessary, the claim for damages might be made in the name of the assignor as well as in the name of the claimant company.

The material facts of the case are sufficiently stated in the judgment now reported. The Crown's appeal was allowed with costs, and the claim dismissed with costs, subject to a direction for return of the deposit.

W. N. Tilley K.C. and *C. P. Plaxton K.C.* for the appellant.

I. F. Hellmuth K.C. and *R. V. Sinclair K.C.* for the respondents.

The judgment of the court was delivered by

SMITH J.—In 1923, the Crown purchased from the Imperial Bank of Canada property at the northwest corner of King and Yonge streets in the city of Toronto, for the use of the Canadian National Railways. Early in the year 1925, the respondent Forgie suggested to the President of the Canadian National Railways a scheme for the purchase of the Home Bank property on King street adjoining on the west the property of the Crown referred to, and the

1932
THE KING
v.
DOMINION
BUILDING
CORPORATION
LTD.
Smith J.
—

erection on the combined site of an office building of twenty-six storeys, the ground floor and the three floors immediately above to be leased for a term at certain rentals to the Canadian National Railways.

On 13th May, 1925, he submitted an offer to purchase the Crown property referred to for \$1,250,000, provided that the Canadian National Railways should agree to sign a lease for the ground floor and next three floors of the twenty-six storey building he intended to cause to be erected on these lands and the lands of the Home Bank referred to, and received a reply from the President on the same date stating that he was agreeable, subject to the approval of the Board of Directors of the company, to recommending to the Government of Canada the acceptance of the proposal.

On the 14th May, a copy of this offer from Forgie, addressed to His Majesty the King, represented by the Minister of Railways and Canals for Canada, was forwarded to the Minister of Railways and Canals, but no action was taken in reference to it.

The Board of Directors of the railway company approved of the acceptance of the offer made to the President. On the 27th day of July, 1925, Forgie sent to His Majesty the King, represented by the Minister of Railways and Canals for Canada, an offer to purchase the Crown lands referred to for \$1,250,000 cash, in which he undertook, upon acceptance of the offer, to pay the balance of the purchase price at such time as possession of the premises "be given to the undersigned not later than the 15th day of September, 1925." The offer further provides that it is understood that Forgie agrees, upon obtaining possession of the lands, on or before the 15th day of September, 1925, to proceed with the erection "of a twenty-six storey modern fireproof office building" on these Crown lands "and on the lands formerly known as the Home Bank of Canada Head Office site *now owned* by the undersigned," and to have the same ready for occupancy "not later than the 25th day of October, 1926, subject to the usual delays," etc. The offer further provided that His Majesty, represented by the Minister of Railways and Canals for Canada, should execute a lease of the ground floor and the next three typical floors

for thirty years upon terms set out. The final clause of the offer is as follows:

This offer of purchase, if accepted by Order of His Excellency the Governor General in Council, shall constitute a binding contract of purchase and sale, subject to all the terms and provisions thereof and which contract shall enure to the benefit of the undersigned, his heirs, executors, administrators and assigns and to the benefit of His Majesty, His successors and assigns.

With the offer a deposit of \$25,000 was made.

On the 29th day of July, 1925, an Order in Council was passed, which recites that the Committee had before them a report dated the 27th day of July, 1925, from the Minister of Railways and Canals representing that His Majesty had title to the Crown lands referred to, that James Forgie had, by offer of 27th July, 1925, to His Majesty represented by the Minister of Railways and Canals, a copy of which was annexed, offered to purchase the premises, subject to the terms and conditions of the offer, and

the Minister accepted said offer of purchase subject to the approval and authority of Your Excellency in Council given on or before the 29th day of July, A.D. 1925.

The Order in Council proceeds to set out in the main the terms of "the said offer of purchase, accepted as aforesaid," and then proceeds as follows:

The Minister submits the above and, upon the advice of the Deputy Minister of Railways and Canals, recommends that authority be given for the acceptance of the said offer of purchase hereto attached marked "A," and that authority be given for the sale and transfer of the premises by His Majesty to the Purchaser, the transfer by its own terms only to vest title of the premises in the Purchaser upon the execution and delivery of the lease hereinbefore referred to, and such transfer to be in form to be approved by the Department of Justice.

The Committee concur in the foregoing recommendation and submit the same for approval.

There is no evidence that this Order in Council or a copy of it, or of the fact of its having been passed, was transmitted by the Minister or by anyone authorized to do so, to Forgie. At page 27 of the Case, his evidence is as follows:

Q. When did you receive that Order in Council?

A. I do not know, as a matter of fact, whether it was that day or a day or so afterwards, but I did receive a certified copy of the Order in Council.

Then, at page 50, on cross-examination there is the following:

Q. Now, you did not receive any letter from the Government with the certified copy of the Order in Council of 29th July; will you please file it if you did. It is not in your affidavit on production?

1932

THE KING

v.

DOMINION
BUILDING
CORPORATION
LTD.

Smith J.

1932

THE KING
v.DOMINION
BUILDING
CORPORATION
LTD.

Smith J.

A. I do not remember having received one or otherwise.

* * * * *

His LORDSHIP: From whom did you get it? Is it important?

Mr. GEOFFRION: A good deal turns on the terms of the Order in Council.

His LORDSHIP: The Order in Council was undoubtedly passed and it does not matter much how it reached him.

At page 100, the evidence of the Minister of Railways is as follows:

His LORDSHIP: When the offer was made to you by Forgie in writing, did you accept the offer subject to approval by the Governor in Council orally or in writing?.

Mr. GEOFFRION: Not in writing, but as to orally I do not know.

Mr. HELLMUTH: I do not want it to be taken that there was not a legal acceptance. I will have something to say on that.

His LORDSHIP: The Order in Council of July 29th states that the offer had been accepted by the Minister subject to the approval of the Governor in Council?

WITNESS: The method is this: I took the ground, which I think was a proper one, that this being a Canadian National affair we would want a recommendation from the Canadian National Railways and then as Minister I would approve or not approve of it; first recommended by the Canadian National Railways and then the Order in Council.

I find it difficult to understand why His Lordship thought it of no consequence how the Order in Council reached Forgie, nor why the counsel, instead of the witness, made the answer as to whether or not the witness accepted the offer orally or in writing. The witness, as would seem from his answer, makes no explicit statement as to whether or not there was in fact the acceptance referred to in his report to Council. What does appear clear is that there was no written acceptance communicated to Forgie by anyone having authority to communicate such acceptance. He obtained a certified copy of the Order in Council, but by what means or from whom, he does not state. The claimant's contention is that the offer of the 27th July, 1925, coupled with an acceptance, constituted a contract, and the main question at issue is whether or not there was an acceptance of the offer. An acceptance would, to amount to a binding contract, require to be an acceptance on behalf of His Majesty communicated to Forgie by someone having authority so to do. The Order in Council, on its face, does not purport to be an acceptance. The Minister recommends that authority be given for the acceptance of the said offer and for the sale and transfer of the premises by His Majesty to the purchaser, and the Committee

concur in that recommendation, and submit the same for approval. In terms this Order in Council authorizes the Minister, to whom the offer was made, to accept it. It is, however, contended that because of the statement in the offer that if accepted by Order of His Excellency the Governor General in Council, it shall constitute a binding contract, the terms of the offer are satisfied by this Order in Council, and that therefore the Order in Council itself amounted to an acceptance creating a completed contract.

I am quite unable to accept this view. An offer is not transformed into a completed contract until there is an acceptance of that offer by or on behalf of the party to whom the offer is made. If the Order in Council had expressly stated that His Majesty accepted the offer, I am of opinion that there would still have been no completed contract until that acceptance was communicated by or on behalf of His Majesty to Mr. Forgie in response to his offer. The situation, to my mind, is not different from what occurred at a later date in connection with the proposed lease of five floors of the proposed building for the Customs and Excise Department. An offer was made by the Dominion Building Corporation Limited, Forgie's assignee, to the Minister of Public Works for such a lease. The Minister of Public Works recommended the acceptance of the offer to His Excellency the Governor in Council, and an Order in Council was made, advising that the necessary authority be given accordingly. Forgie says that he received a copy of this Order in Council on or about the 3rd of February. He was then, of course, acting for his assignee, the Dominion Building Corporation Limited, which made the offer. Again, he does not state how or from whom he received the certified copy of the Order in Council, but admits that there was no letter or writing. It is not contended by anyone that in this later case the Order in Council constituted an acceptance, even though Forgie in some way got a certified copy of it.

I am therefore of opinion that the Order in Council of the 29th July, 1925, did not in itself constitute an acceptance of Forgie's offer of the 27th of that month, because, in the first place, the offer was not made to His Excellency the Governor General in Council and the Order does not purport to accept the offer, and secondly, because there is

1932
THE KING
v.
DOMINION
BUILDING
CORPORATION
LTD.
Smith J.

1932

THE KING
v.
DOMINION
BUILDING
CORPORATION
LTD.

Smith J.
—

no evidence that the making of such an Order in Council was communicated to Forgie on behalf of His Majesty by the Minister of Railways and Canals, or anybody else duly authorized. Section 15 of the *Department of Railways and Canals Act*, ch. 35; R.S.C., 1906, reads in part as follows:

No deed, contract, document or writing relating to any matter under the control or direction of the Minister shall be binding upon His Majesty, unless it is signed by the Minister, or unless it is signed by the Deputy Minister, and countersigned by the Secretary of the Department, or unless it is signed by some person specially authorized by the Minister, in writing, for that purpose.

As shown by the evidence already quoted, the acceptance referred to in the report of the Minister set out in the Order in Council, if there was any, was not in writing, signed in compliance with this section, and therefore was not binding upon His Majesty. The statement in the Minister's report to Council, to the effect that the offer had been accepted, was not a statement communicated to Forgie.

It is argued, however, that because there were numerous extensions of time given to Forgie for the carrying out of his contract, signed by the Deputy Minister of Railways and Canals, and a final extension to the 30th day of December, 1925, signed by the Minister himself, there was an acceptance complying with the terms of the section just quoted. The letter extending the time, that was signed by the Minister, is exhibit 30, replying to Forgie's request for an extension, and is dated November 17, 1925, and is as follows:

OTTAWA, 17th November, 1925.

DEAR SIR:

*Re: Purchase of Crown Property (Imperial Bank Property, so called),
Corner of Yonge and King Streets, Toronto, Ont.*

I have your letter of the 16th instant, addressed to the Deputy Minister, applying for a further extension of time within which to receive possession of the property in question and to make payment of the balance of purchase price therefor and to perform and carry out on your part other details of the contract of purchase under your offer of purchase, dated July 27, 1925, and the acceptance thereof.

In reply, I am to advise you that a further extension of time, namely, from November 17, 1925, to December 30, 1925, is hereby given, but without prejudice on the part of His Majesty as to, and without waiver on the part of His Majesty of, any of His rights, reservations or remedies under and as provided for by the said contract should you fail to perform and carry out, within the hereby extended period, all the covenants and

conditions which on your part, under and as provided by the said contract, were to be performed and carried out within the original period thereunder provided.

Yours faithfully,

(Sgd.) GEO. P. GRAHAM.

JAMES FORGIE, Esq.,
Barrister, etc.,
Toronto, Ont.

1932
THE KING
v.
DOMINION
BUILDING
CORPORATION
LTD.
—
Smith J.

This letter, signed by the Minister, is, of course, not in terms an acceptance of Forgie's offer, but implies that there is already in existence a contract. If I am correct in my view that up to this time there was in fact no contract, then this letter was written under a misapprehension of the real state of fact, and, I think, cannot be taken as an acceptance by the Minister of the offer so as to constitute a contract. The Minister was under the impression that a contract already existed, and he had no intention by this letter of constituting a contract; and without such intention I do not see how he can be held to have done so. There seems to be no doubt that the Minister was under the impression that a binding contract was in existence from about the time that the Order in Council was passed. Whether he thought that the contract was completed by the Order in Council itself, or by some acceptance by him or by his authority before or after the making of the Order, or by the fact that the Manager and Board of Directors of the Canadian National Railways had approved of the acceptance of the offer, is not apparent. Here we are not, however, dealing with what might be inferred in connection with negotiations between private parties. Parliament has seen fit, for the protection of His Majesty, to enact sec. 15 referred to, and we are not entitled to disregard that enactment. The question, therefore, is whether or not there was in fact an acceptance that complies with the terms of this sec. 15, and it seems to me impossible to say that there was.

It is further argued on behalf of the respondent that if there was no contract by virtue of the offer, the Minister's report and Order in Council, and the correspondence, then there was such part performance of the proposed contract by the respondents as to constitute a contract binding upon His Majesty represented by the Minister of Railways and Canals. It seems to me very doubtful if the express terms of the statute can be disregarded, especially, where, as here,

1932
THE KING
v.
DOMINION
BUILDING
CORPORATION
LTD.
Smith J

the acts of part performance alleged took place entirely without the knowledge or assent of the Minister. There was no intimation by the claimants from the time of the passing of the Order in Council until the February following, when the Minister definitely refused to proceed further, that the claimants were proceeding in any way to carry out the contract, and no knowledge on the part of the Minister that the alleged acts were being performed. The claimants' successive applications for an extension of time to commence were an intimation to the Minister that nothing was being done towards carrying out the contract. The doctrine of part performance implies that one party to an intended contract stands by and knowingly allows the other party to perform acts by way of carrying out the proposed contract that places the party so performing in a changed position with regard to the subject matter. I am of opinion that none of the acts of part performance alleged here would amount to part performance. The part performance alleged is the entering into a contract by Forgie for the purchase of the Home Bank property and the payment of money on account, the preparation of plans and specifications for the building, and the entering into a contract for its construction. All these things, except some of the payments, were done prior to the making of the offer of the 27th July, 1925, and were steps taken by Forgie to put himself in a position to make the offer, and to carry it out if accepted. The option for purchase of the Home Bank property was obtained on the 7th May, 1925, and \$10,000 was then paid. The offer itself has the statement that the Home Bank property is "now owned" by Forgie, and refers to plans, details and specifications prepared and to be prepared. The evidence shows that these plans were prepared before the date of the offer of 27th July, 1925. The entry into the contract for the construction of the building was all arranged with Mr. Anglin, of Anglin-Norcross Limited, as a preliminary to the making of an offer, as shown in exhibit 5, dated 2nd May, 1925. By that document, it was agreed that in consideration of the advance of the \$25,000 deposited with the offer, Anglin-Norcross Limited were to have the contract to construct the building. Anglin-Nor-

cross Limited supplied the \$25,000 pursuant to this letter, and Forgie was bound to give them the contract from that time.

All the payments subsequent to the first \$10,000 in connection with the option on the Home Bank property were made by the claimants to keep that option good and to keep themselves in a position to carry out the contract if accepted, and are in no sense part performance of anything that Forgie had agreed to do in his offer. The negotiations with the President of the Canadian National Railway Company were all preparatory to the making of the offer to the Minister, as Forgie knew perfectly well that approval of his scheme by the President and Board of Directors of the railway company was a necessary preliminary to any consideration of his scheme by the Minister of Railways and Canals. I am of opinion, therefore, that there was no part performance of the proposed contract which would have the effect of an acceptance of the offer and thus constitute a binding contract.

It seems clear from the evidence of Forgie that the reason for all the applications for postponement was the expectation of obtaining from the Minister of Public Works the agreement for the lease of five storeys of the proposed building for the use of the Department of Customs and Excise.

At page 38 there is the following:

His LORDSHIP: You were waiting on the Order in Council in respect of the Customs lease?

The WITNESS: Yes, and it was impossible during an election to secure the passing of that Order in Council and these extensions were given to me in order to hold over; this was definitely stated to me. The extensions were granted in order to enable me to maintain my position until Parliament was assembled and the Order in Council put through for the Customs and Excise lease of the five floors.

And at page 58:

It was always our hope that something might occur to give us the Order in Council for the Customs Department.

And in his letter, dated 15th February, 1926:

As you are aware, the Government decided last summer to lease five floors in this building, for different departments of the Government, and this was one of the factors in financing the construction of the building. Through circumstances with which you are familiar, and with which we had nothing to do, the Order in Council dealing with this matter, which was promised last October, was not passed until the 1st day of February, A.D. 1926. It was not our fault that the Order was not passed before the

1932
THE KING
v.
DOMINION
BUILDING
CORPORATION
LTD.
—
Smith J.
—

1932

THE KING

v.

DOMINION
BUILDING
CORPORATION
LTD.Smith J.

expiry of the extension of time, and if there has been any default it is not on the part of those I represent.

There is also the telegram of Mr. Spence, exhibit 9, on Forgie's behalf, asking for an extension and explaining that delay was caused by change in financing arrangements.

Forgie, on the 29th December, 1925, by letter, asked for an extension of time till January 31, which was not granted, yet he made no move towards going on with the contract till after the Order in Council of February 1, 1926, giving authority to the Minister of Public Works to accept the offer of the lease of the five floors for the Customs and Excise Department. On getting the copy of this Order, he writes at once, on 3rd February, that he is in a position to complete the purchase and make payment about 10th February.

The proposition from the first involved raising the money for payment of the site and building by a flotation of bonds, secured by mortgage of the property, to be bought by the public. The proposed leases of four floors to the Canadian National Railway Company and of the five floors to the Customs and Excise Department at the rentals stated and for the long terms proposed would have made sure a very considerable revenue which would have been an important factor in securing purchasers for the bonds. The witness Anglin thinks the bonds would have sold readily without the proposed lease to the Customs and Excise Department, but, though he and his firm were largely interested in having the scheme carried through, they made no move towards a flotation on that basis instead of waiting for the Order in Council in reference to the Customs and Excise lease, as Forgie says they did.

I entertain no doubt on the evidence that the claimants never intended to go on with the contract unless the lease to the Customs and Excise Department should be secured, and that without that lease they never were in a position to go on with the contract.

Mr. Forgie thought the Order in Council authorizing that lease made it a certainty, and at once proceeded to write that he was in a position to go on. The Order in Council, however, was never acted on, but was repealed shortly afterwards, so that the claimants did not in fact get themselves into the position to go on as stated in Mr. Forgie's letter, of February 3.

I am of opinion that there never was a completed contract binding upon His Majesty represented by the Minister of Railways and Canals, or otherwise.

I am also of opinion that, when Forgie made his various applications for an extension of time and received them in the terms of the various letters of extension, time was made by these extensions of the essence of the contract and that the claim could not be sustained even if there were a contract.

Counsel for respondent further contends that section 15 of the *Department of Railways and Canals Act*, quoted above, does not apply here because the transaction was a sale of public lands governed by the provisions of the *Public Lands Grants Act*, ch. 57, R.S.C., (1906), whereby the Governor in Council is authorized to sell or lease any public lands which are not required for public purposes.

This point seems to be disposed of by the judgment of the Privy Council in *Dominion Building Corporation Ltd. v. The King* (1), where it is stated that, even if the matter were originally not a departmental but a government one, their Lordships would be of opinion that it was appropriated to the Department of Railways and Canals by the Order in Council, and was thereby made part of the Minister's administration for the purposes of s. 38.

Moreover, the acceptance of the offer involved not only a sale of public lands but a contract by His Majesty for the payment of a large sum of money annually for a period of thirty years.

In any event, there was no contract to purchase. There was an offer to purchase which the Order in Council did not purport to accept, but which merely authorized the Minister to accept, and which, even if construed as an acceptance, was never communicated to the party making the offer by anyone authorized to do so on behalf of His Majesty.

There being no contract, the respondent is entitled to the \$25,000 as a return of the deposit, but not as an item of damages as claimed.

Otherwise the appeal is allowed and the claim dismissed with costs throughout.

Appeal allowed with costs.

Solicitor for the appellant: *W. Stuart Edwards.*

Solicitor for the respondents: *R. V. Sinclair.*

1932
THE KING
v.
DOMINION
BUILDING
CORPORATION
LTD.
Smith J.