

1911

POIRIER v. THE KING.

*Nov. 22.

1912

*Feb. 20.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Contract—Sale of hay—Rejection—Conversion—Damages—Counter-claim—Evidence.

APPEAL from a judgment of the Exchequer Court of Canada (1), in favour of the suppliant for a part of his claim and dismissing the counterclaim of the Crown.

The suppliant by contract with the Crown, represented by the Minister of Agriculture, undertook to furnish and did furnish a quantity of hay to be delivered at St. John, N.B., and from there to be shipped to South Africa. A certain portion of the hay delivered was rejected by the officials of the Department as not up to the standard required by the contract, some of which was restored to the suppliant and some stored subject to his order. No order having been received in respect to the latter, and the storage space being required, the hay was sold by the Department and the proceeds paid to the suppliant, who filed a petition of right claiming the price of hay received by the Department and not paid for and damages for the sale of the stored hay without authority, which was alleged to be a conversion. He was given judgment for the hay delivered and accepted, but his claim for damages was dismissed, the court holding that the

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

"Exchequer Court Act" did not make the Crown liable for a tort committed by an official.

The contract provided that hay occupying a space of more than 70 cubic feet per ton, if accepted, should be subject to a reduction of \$1.50 per ton from the contract price, and the Crown by counterclaim demanded payment of an amount representing the aggregate of the deductions for excess of space. The court dismissed the counterclaim for want of evidence.

On an appeal by the suppliant to the Supreme Court of Canada the court, after hearing counsel on behalf of both parties, reserved judgment, and, on a subsequent day, there being an equal division of opinion among the judges, the judgment of the Exchequer Court stood affirmed.

The Crown took no cross-appeal on the counterclaim.

Appeal dismissed without costs.

Auguste Lemieux K.C. for the appellant.

R. C. Smith K.C. for the respondent.

1912

POIRIER

v.

THE KING.