

1907

*June 7, 8.

*June 24.

DEGALINDEZ ET AL. V. THE KING.

Railway aid—Provincial subsidy—Construction of statute—60 V. c. 4, s. 12 (Que.)—54 V. c. 88, s. 1(j) (Que.)—Breach of conditions—Compromise by Crown officers—Obligation binding on the Crown—Right of action—Application of subsidy to extension of line of railway.

APPEAL from the judgment of the Court of King's Bench, appeal side(1), affirming the judgment of Routhier C.J. in the Superior Court, District of Quebec, dismissing the appellants' petition of right with costs.

By their petition of right, the appellants, as transferees of The Atlantic and Lake Superior Railway Co. and of The Baie des Chaleurs Railway Co., claimed \$155,000, as the unpaid balance of subsidy granted in aid of the construction, completion and equipment of the Baie des Chaleurs Railway.

The appellants claimed that, under the statutes of the Province of Quebec, 54 Vict. ch. 88, sec. 1, sub-sec. (j), and 60 Vict. ch. 4, sec. 12, the subsidy was attributable to the first eighty miles of the railway beginning at Metapedia and extending towards Gaspé Basin; that the land subsidy was of a special character subject only to the conditions enumerated in the second part of said sub-section (j), and that, as the Lieutenant-Governor in Council had exercised the discretion of making cash payments in lieu of the land

*PRESENT:—Fitzpatrick C.J. and Girouard, Davies, Idington, MacLennan and Duff JJ.

subsidy given by the statute and effected a compromise for the payment of the last thirty-five cents per acre, at the rate agreed upon by the compromise, the Provincial Government was bound by the terms of that transaction.

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It was contended by the respondent that the subsidy was attributable to the eighty miles of the railway beyond the first one hundred miles of the line, viz., the part extending from Paspébiac to Gaspé Basin; that payment was conditional on the completion of the works to Gaspé Basin, which condition had not been fulfilled, and that, in any event, such payment was a matter of grace and was not obligatory upon the Crown.

In the courts below, the petition of right was dismissed and it was held that the subsidy applied to the eighty miles of the railway which terminated at or near Gaspé Basin, and that a different construction placed upon the statute by the officers of the Crown, in effecting a compromise and making part payment of the subsidy in money, gave the appellants no right to recover the balance claimed from the Crown.

After hearing counsel on behalf of the parties, on the appeal, the Supreme Court of Canada reserved judgment and, on a subsequent day, dismissed the appeal with costs for the reasons given in the court below.

Appeal dismissed with costs.

T. Chase-Casgrain K.C. for the appellants.

Charles Lanctot K.C. for the respondent.