
DOUTRE *v.* THE QUEEN.

[E.C.] 1881

Petition of Right—Claim for counsel fees—Retainer for services before Fishery Commission.

Jan. 12,

[S.C.] 1882

May 13.

The suppliant filed a petition of right claiming a sum of \$10,000 as being the balance of the value of his work and labor, care, diligence, and attendance, upon retainer, in and about the preparation of and conducting Her Majesty's claim before the Halifax Commission, which sat under the Treaty of Washington in the summer of 1877 at Halifax, to arbitrate upon the differences between Great Britain and the United States in connection with the value of the inshore fisheries, etc., and for money by respondent paid, laid out, and expended in travelling and remaining at divers places on Her Majesty's business connected with the said claim.

The suppliant had been paid the sum of \$8,000., and the Crown defended the action on the grounds that the amount paid was accepted by the suppliant in full for his services and expenses; that, if not accepted in full, the amount paid was a sufficient remuneration for such services and expenses; and that no action would lie for the recovery of a claim for counsel fees.

Held, (per Fournier, J.) that the suppliant, under the agreement entered into with the Crown, was entitled to sue by petition of right for a reasonable sum in addition to the amount paid him, and that he should receive from the Crown, in addition to such amount, the sum of \$8,000 as a remuneration for his services, with interest on that amount from the date upon which the petition of Right was received by the Secretary of State, together with his costs.

On appeal to the Supreme Court of Canada,

Held (affirming the judgment of the Exchequer Court),

1. Per Fournier, Henry and Taschereau, JJ.: That the suppliant, under the agreement entered into with the Crown, was entitled to sue by petition of right for a reasonable sum in addition to the

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amount paid him, and that the \$8,000 awarded him in the Exchequer Court was a reasonable sum.

2. Per Fournier, Henry, Taschereau and Gwynne, JJ.: By the law of the province of Québec, counsel and advocates can recover for fees stipulated for by an express agreement.
3. Per Fournier and Henry, JJ.: By the law also of the Province of Ontario, counsel can recover for such fees.
4. Per Strong, J.: The terms of the agreement, as established by the evidence, shewed (in addition to an express agreement to pay the suppliant's expenses) only an honorary and gratuitous undertaking on the part of the Crown to give additional remuneration for fees beyond the amount of fees paid, which undertaking is not only no foundation for an action but excludes any right of action as upon an implied contract to pay the reasonable value of the services rendered ; and the suppliant could, therefore, recover only his expenses in addition to the amount so paid.
5. Per Ritchie, C.J.: As the agreement between the suppliant and the Minister of Marine and Fisheries, on behalf of Her Majesty, was made at Ottawa, in Ontario, for services to be performed at Halifax, in Nova Scotia, it was not subject to the law of Quebec ; that in neither Ontario nor Nova Scotia could a barrister maintain an action for fees, and therefore that the petition would not lie.
6. Per Gwynne, J.: By the Petition of Right Act, sec. 8, the subject is denied any remedy against the Crown in any case in which he would not have been entitled to such remedy in England under similar circumstances. By the laws in force there prior to 23—24 Vic. c. 34 (Imp.), counsel could not, at that time, in England, have enforced payment of counsel fees by the Crown, and therefore the suppliant should not recover. See Can. S. C. R., vol VI, p. 342.