1933
June 5, 6, 7 & 8.
1934
June 26.

BETWEEN:

DUFRESNE CONSTRUCTION CO. LTD. .... SUPPLIANT;

AND

HIS MAJESTY THE KING.......... RESPONDENT.

Crown—Public works—Contrat à forfait—Civil Code—Extra work—Engineer's certificate—Condition precedent—Fortuitous event—"Uncontrollable action of nature which it would have been impossible to guard against"—Privileged documents.

By an agreement in writing suppliant contracted with Respondent to construct a pier and quay at Sorel, Quebec, in accordance with certain plans and specifications attached to the agreement. Suppliant was to be paid for the work according to certain unit prices and it was stipulated that "for any work or additional work done, or materials or things provided, under the written orders of the Engineer, for which no price or prices are named herein, His Majesty the King, in consideration and subject as aforesaid, will pay to the contractor the actual and reasonable cost, as determined by the engineer, of such work, materials and things, with an additional ten per cent thereon for the use of tools, contractor's plant, superintendence and profits."

Work was commenced in November, 1927, and by November 20, 1928, most of the piles required for the work had been driven into position. On the latter date suppliant was instructed by the district engineer to stop work because of water having risen in the forms in which concrete was to be deposited and the piles were left unprotected. Due to the pressure of ice in the spring of 1929 certain sections of the piles were broken and rendered unserviceable. Suppliant was instructed by Respondent's engineer to remove the damaged piles. This proved very difficult and suppliant was authorized to shift the outer face of the quay five feet outside its original alignment. Suppliant's claim is for the cost of removing and replacing the broken piles.

Held: That the contract entered into by the parties is not a *contrat à forfait* according to the terms of the Article 1683 C.C.

2. That the engineer's certificate, required for the payment of works specified in the contract and of additional work not covered by the contract but ordered by the engineer, is not a condition precedent to the right of the contractor to be paid for work done to replace works executed in virtue of the contract which have been destroyed or damaged by an act of nature.

3. That certain memoranda, prepared for the guidance of the Minister of Public Works in determining whether suppliant's claim should be entertained or not, were privileged, on the ground that they were confidential reports, and not on the ground that their production would be prejudicial to the public interest. The privilege of exclusion of documents as evidence at the request of the Crown must not be extended beyond the requirements of public safety or convenience.

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PETITION OF RIGHT by the suppliant claiming the value and cost of work done under a contract entered into with Respondent.

The action was tried before the Honourable Mr. Justice Angers at Montreal, P.Q.

L. E. Beaulieu, K.C. for the suppliant.

J. C. Lamothe, K.C. for the respondent.

The questions of law raised are stated in the reasons for judgment.

ANGERS, J., now (June 26, 1934) delivered the following judgment:

This is a petition of right by which the suppliant, Dufresne Construction Company Limited, is claiming from His Majesty the King the sum of $175,563.63, the alleged value and cost of works done (including labour and materials) in connection with the construction of a pier and quay at Sorel, County of Richelieu, Province of Quebec, in virtue of an indenture made on December 15, 1927.

The pier and quay were to be constructed according to plans and specifications attached to the indenture.

Under the indenture His Majesty was to pay for the works according to certain unit prices stated therein: see clause 36 (which clause also contained the stipulation quoted in paragraph one of the above headnote).

[The learned Judge discussed the pleadings and evidence adduced at trial and continued.]

Counsel for suppliant submitted, during the argument, that the contract entered into by the parties herein is not a *contrat à forfait,* i.e. a contract according to plans and specifications at a fixed price, but one of lease or hire of work carrying a remuneration to be reckoned on a series of unit prices provided in the indenture, and that the contractor is accordingly not subject to the provisions of article 1690 C.C.; in support of his contention counsel for suppliant cited the following authorities: Baudry-Lacantinerie, 3ème édition, vol. 22, n° 4005; Frémy-Ligneville, Traité de la Législation des Bâtiments et Constructions, vol. 1, nos 3 et 28; *Jalbert* v. *Cardinal* (1); *Renaud* v. *Bernier* (2).

(1) (1914) R.J.Q., 45 S.C., 468. (2) (1919) 25 R.L.n.s. 389.

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I am inclined to think that the contention of suppliant's counsel on this point is well founded; I do not believe that the contract with which we are concerned is a *contrat à forfait* according to the terms of article 1683 C.C. This does not mean that the contractor, i.e. the suppliant, is *ipso facto* entitled to claim from His Majesty the cost of any additional work, not provided for in the contract or the specifications, which it may have performed. The relations of the parties are primarily governed by the contract, and, unless it be silent or ambiguous on any point involved, one must be guided solely by its provisions.

The first question which logically presents itself to one's mind is whether the district engineer, Lucien Dansereau, was justified in stopping the work as he did.

The respondent contends that the district engineer had the right to stop the work seeing that there was water in the forms; he relies on the sixth paragraph of section 16 of the specifications and paragraph (*e*) of part (V) of the standard specification for concrete and concrete materials; they read as follows:

16. *Concrete.*—

. . . .

Samples of the concrete taken as deposited during the progress of the work shall show a compressive strength for standard cylinders of 3,000 pounds per square inch.

(V) *Handling and placing Concrete.*—

(*a*)

(*b*)

(*c*)

(*d*)

(*e*) *Depositing under Water.*—Concrete shall not be deposited under water unless distinctly called for by the specification or the works. When permitted by the specification, still water shall be maintained at the place of deposit. When concrete is placed under water, the coarse aggregates shall not be larger than 1-inch in any direction. In no case shall large stones or plums be placed in concrete deposited under water.

The respondent also invokes paragraph (*d*) of said part (V), which is in the following terms:

(*d*) *Freezing Weather.*—Concrete shall not be mixed or deposited at a freezing temperature, except on the written authority of the Engineer, and then special precautions must be taken to avoid the use of materials covered with ice crystals or containing frost, and to provide means for preventing the concrete from freezing after being placed in position and until it has thoroughly hardened. The water and all aggregates shall be heated to well above the freezing point before mixing.

No evidence was adduced showing that there was any likelihood of frost on the two occasions on which the work

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was ordered stopped by the local engineer in October and November, 1928; this motive, alleged in the defence in support of the local engineer's action in suspending the work, was, if not expressly at least tactily, abandoned on the trial; the only reason held out to justify the cessation of the work, and in connection with which proof was made, was the rise of the water in the forms. The evidence shows that this rise was not considerable.

[The learned Judge here referred to a distinction made at trial between concrete deposited under water and deposited in water, and continued.]

I am inclined to believe that, with the small quantity of water in the forms on October 18 as well as on November 20, the work could have been proceeded with and the concrete poured into the forms without any risk, provided the necessary precautions were taken and an additional proportion of cement added to the concrete, as indicated by suppliant's experts. However in view of the divergence of opinion of the engineers as to the degree of strength and solidity of concrete deposited in water as compared with concrete poured in dry forms, I do not think that the respondent's engineer acted arbitrarily in suspending the work and that his action was tantamount to a tort; seeing the provisions of paragraph (*e*) of part (V) aforesaid, I am satisfied that he acted strictly within his right.

I may note that in a letter to the Minister of Public Works, dated February 28, 1930, submitting a detailed estimate of the work done by it at Sorel, the suppliant says (p. 2 of letter, exhibit 1):

> We do not claim that your engineers had not apparent reasons to stop us working; on the contrary, on account of the fact that they thought it was paramount to the success of this wharf that a concrete having a compression of 3,000 pounds per square inch should be obtained, and in view of the level of the water they presumed that this high compressive strength could not be obtained.

Adolphe Dansereau says that on both occasions, namely on October 17 or 18 and on November 20 he protested verbally to the respondent's engineer against the latter's instructions to stop the work; Adolphe Dansereau is corroborated on this point by Dufresne; the alleged protest is denied and the evidence referring thereto is not on the whole very satisfactory. Be that as it may, since I have reached the conclusion that the respondent's engineer had

the right to stop the work, the protest is, in my opinion, immaterial. The instructions had to be obeyed.

As already stated, a large number of the piles which had been driven prior to November 20, 1928, date on which the work was stopped for the winter, were damaged during the ice break-up in the spring of 1929 and had to be replaced.

It was urged on behalf of the respondent that, under sections 21 and 38 of the contract and clause 10 of the general conditions forming part of the specifications, the suppliant was obliged to replace the damaged piles at its own cost; sections 21 and 38 and clause 10 contain respectively the following stipulations:

21. The Contractor shall be at the risk of, and shall bear all loss or damage whatsoever, from whatsoever cause arising, which may occur to the works, or any part thereof, until the same be finally accepted by the Minister, and if any such loss or damage occur before such final acceptance, the Contractor shall immediately, at his own expense, repair, restore and re-execute the work so damaged, so that the whole works, or the respective portions thereof, shall be completed within the time limited for completion thereof, and any delay occasioned by the Contractor to the other contractors on the work or any intereference by the Contractor with the operation which may be a cause of delay or damage shall be rectified at the cost of, and the claim for damage or delay (if any) shall be at the charge of the Contractor.

38. The said price or prices shall be accepted by the Contractor as full compensation for everything furnished and done by the Contractor under this contract, including all work required but not included in the items hereinabove mentioned, and also for all loss or damage arising out of the nature of the works or the action of the weather, tides, elements, or any unforeseen obstruction or difficulty encountered in the prosecution of the work, and for all risks of every description connected with the works, and for all expenses incurred by or in connection with the works, and for all works, and for all expenses incurred by or in consequence of any delay or suspension or discontinuance of the work as herein specified, and for well and faithfully completing the works as in this contract provided.

10. *Prices.*—The prices mentioned by the Contractor in his tender are to be taken as those upon which he agrees to be paid for all the works embraced in this specification and accompanying plans, and also for all extra works which may be required for the proper execution of the contract. The prices will be held as rigidly inclusive, and to cover all failures, accidents, contingencies, plant, labour and materials, and all damage that may happen or occur to the works, or any portion of them, or to the plant or tools provided and employed, arising from the action of the elements, either from gales, storms, flood, ice, fire or any other cause whatever, up to their completion and final acceptance by the Department, excepting in such cases of uncontrollable action of nature which it would have been impossible to guard against.

Clause 9 of the general specifications, entitled "Broken, Shattered or Misplaced Piles," upon which counsel for

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respondent also relied, has, in my opinion, nothing to do with the present case. I may add that clauses 32 and 33 of the general conditions, also relied upon by counsel for respondent, appear to me to have no application whatever herein.

There would be no doubt as to the responsibility of the suppliant for the replacement of the broken piles if it were not for the exception contained in clause 10: "excepting in such cases of uncontrollable action of nature which it would have been impossible to guard against."

Let us try to determine what is the meaning of this exception, which is not included in either section 21 or section 38 of the contract.

Counsel for suppliant argues that the limitation of the responsibility of the contractor by the exception contained in clause 10 aforesaid extends to sections 21 and 38 of the contract, because, if it is true that, "in cases of doubt, the contract is interpreted against him who has stipulated and in favour of him who has contracted the obligation" (art. 1019 C.C. P.Q.), *a fortiori* the same doctrine applies, when the contract contains a clause which palliates explicitly the strictness of other clauses dealing with the same subject; and counsel refers to section 6 of the contract. Section 6 contains *inter alia* the following stipulation: "the several parts of this contract shall be taken together, to explain each other and to make the whole consistent." The above stipulation merely expresses the substance of the law on the question: see article 1018 C.C.P.Q.; Pollock, Principles of Contract, 9th Ed., p. 274. The learned counsel's conclusion is that the contractor should not be held responsible for the loss, if it be attributable to an "uncontrollable action of nature, which it would have been impossible to guard against." Section 4 of the contract says that the specifications, special specifications, plans and drawings are to be part of the contract; it is interesting to note that section 57 of the contract stipulates that "in the event of any inconsistency between the provisions of this contract and the provisions of the specifications forming part hereof, *the provisions of the specifications shall prevail.*"

This is quite logical and reasonable when one considers that the printed clauses of the contract are general in their

terms and made to apply to any kind of work or construction, whilst the specifications are drafted for the particular work or construction which they are intended to cover: see *Desrosiers* v. *Lamb* (1).

Counsel for suppliant then observes that the exonerating clause does not deal with fortuitous event, inasmuch as it does not require that the uncontrollable action of nature be one which could not be foreseen. Paragraph 24 of article 17 of the Civil Code defines the fortuitous event as follows:

> A "fortuitous event" is one which is unforeseen, and caused by superior force which it was impossible to resist.

Counsel's observation on this point is, to my mind, well founded: the exception states that the act of nature must be uncontrollable, which is not synonymous to and does not necessarily imply unforeseen; the distinction however seems to me, in the present case, idle and immaterial.

What I have to determine is the purport or the intended significance of the exception contained in clause 10. Does it apply to the contingencies enumerated in the preceding phrase, namely to gales, storms, flood, ice and fire or does it deal exclusively with other contingencies not mentioned therein, as, for instance, lightning, volcanic eruptions, earthquakes, landslides, avalanches, against which it is impossible, even in the least measure, to guard? If the exception applies to gales, storms, flood, ice and fire, it narrows down to a great extent the import or bearing of the clause: gales and storms are uncontrollable and cannot, in most instances, be guarded against, if, on the other hand, there may perhaps be protection, to a certain degree, against floods, ice and fire; the exception would almost become broader than the rule. On the other hand, the clause, after mentioning gales, storms, flood, ice and fire, adds: "any other cause whatever," which would seem to include every possible contingency—including those I have indicated as well as others I may have overlooked—which are not nominally referred to in the clause.

Of the contingencies I have mentioned, which are not included in clause 10, volcanic eruptions, landslides and avalanches are, considering the site of the work, absolutely out of question in the present case; lightning is not likely

(1) 1888 M.L.R. 4 Q.B. 45.

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to cause appreciable damage to a concrete pier and quay; it is even doubtful to me whether an earthquake, unless of an exceptional severity, could do much harm to such a structure. I do not pretend to have given a complete list of all possible contingencies liable to cause damage to the pier and quay with which we are concerned; I think however that, with those enumerated in the contract and the specifications, we have a fairly exhaustive enumeration of the contingencies which could possibly be anticipated. If the exception cannot reasonably deal with the contingencies to which I have alluded, and I believe it cannot, it must apply and can only apply to the contingencies enumerated in clause 10, namely gales, storms, flood, ice and fire and to any other "action of the elements," and to "any other cause whatever," provided it be one that could damage a concrete pier and quay; otherwise this exception would have no meaning whatever.

Having reached the conclusion that the exception in clause 10 applies to the contingencies nominally indicated therein as well as to others liable to cause damage to a work of the nature of the pier and quay which the suppliant undertook to build, the question for me to decide is whether the destruction of part of the piles by the ice break-up in the spring of 1929 was caused by "an uncontrollable action of nature which it would have been impossible to guard against."

The suppliant contends that he could have built the superstructure within a delay of three or four weeks at the utmost from the time the work was ordered stopped and that the superstructure would have protected the piles and prevented their destruction. This contention was not challenged and I believe it well founded. The construction of the superstructure was a means at the suppliant's disposal to protect the piles. The respondent however, wrongly or rightly, which appears to me immaterial, prevented the suppliant from using it and from the moment the respondent's engineer gave instructions to suspend the work for the balance of the season, this means of protection ceased to be available. Perhaps the suppliant could have continued the work at its own risk and thus saved the piles; I do not think however that it was bound to do it in view of the formal orders it had received and

there is nothing to indicate that it would have been allowed to do it.

Some of the respondent's witnesses suggested that the contractor could have erected a concrete crib which would have protected the piles from the ice shove during the break-up period. The evidence discloses that the erection of a crib would have cost from $60 to $80: see depositions Marien and Clarke. Landry, an engineer called as witness by the respondent, said (at p. 11 of his deposition) that the crib would have cost nearly as much as the structure itself. According to Landry, apart from the superstructure or the crib, there were no means to effectively protect the piles (dep. Landry, pp. 11 and 12).

The time required for the construction of a crib and the outlay entailed thereby rendered, in my opinion, the project impracticable.

It was contended that the ice break-up in 1929 occurred earlier than usual and at a time when the water was very low; it was further stated that, had the break-up happened at a later date, with a higher and normal level of the river, the ice would have passed over the piles and consequently would not have damaged them. If these contentions are right, and I think they are, it would mean that the cause of the disaster was not only uncontrollable but even unforeseen. However it may be, the exception in clause 10 of the general conditions of the specifications, as I have already noted, does not stipulate that the action of nature responsible for the damage must be unforeseen; the exception merely requires that it be uncontrollable.

It was urged on behalf of the suppliant that the ice break-up in the spring of 1929 had been hastened by an ice-breaker, the property of the Dominion Government, which broke the ice in Sorel harbour, particularly near the spot where the piles were situated, very early in the season, when the ice was still solid and green and the water low and that this had contributed to a large extent to the damage done to the piles. The evidence on this point, quite positive and definite as regards the action of the ice-breaker on that occasion, is, naturally enough, not so categorical regarding the consequences of such action; it never-

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theless creates a strong presumption that the premature breaking up of the ice by the ice-breaker did its share in the shattering of the piles. It is almost impossible to say when, otherwise, the ice would have started moving and in what condition of solidity and compactness it would have been at that moment; it is equally difficult to say what would have been the level of the water on the day the ice break-up would have taken place under natural conditions. The ice would undoubtedly have been softer and more friable and, in consequence, less apt to cause damage; moreover the river would very likely have been somewhat higher due to the increased inflow occasioned by the melting of ice and snow: the contingency of a smash up of the piles in these circumstances would have been considerably diminished, if not entirely averted.

[The learned Judge here considered the evidence on this point and continued.]

After weighing the evidence carefully I have reached the conclusion that the partial destruction of the piles is attributable to "an uncontrollable action of nature which it would have been impossible to guard against" and that this action of nature, namely the ice break-up, was aggravated by the premature breaking up of the ice by the Government ice-breaker, the *Mikula*.

The exactness of the amount of $163,800.43 was not disputed; so that, if the suppliant is entitled to recover the value of the work done in removing or replacing the damaged piles and shifting the outer face of the wharf, he must receive the said sum of $163,800.43, no more and no less.

It has been argued on behalf of the respondent that the suppliant is not entitled to be paid the sum of $163,800.43 or any portion thereof for want of a written order from the chief engineer authorizing the execution of the works for which the said sum is claimed and of a certificate from said engineer showing that the said order has been complied with and fixing the value thereof; it has been urged that the engineer's certificate is a condition precedent to the suppliant's right to be paid for such works. The respondent's contention is based on sections 7 and 10 of the contract; the following authorities were cited by counsel

for respondent: *Pigott* v. *The King* (1); *Beaulieu* v. *The King* (2) *The Queen* v. *Starrs* (3); *Wood* v. *The Queen* (4); *Berlinquet* v. *The Queen* (5); *Guilbault* v. *McGreevy* (6); *Peters* v. *Quebec Harbour Commissioners* (7). There are other decisions in the same sense, among which I may cite: *Isbester* v. *The Queen* (8); *Jones* v. *The Queen* (9); *Ross* v. *The Queen* (10); *O'Brien* v. *The Queen* (11); *Goodwin* v. *The Queen* (12); *Murray* v. *The Queen* (13); *The Queen* v. *McGreevy* (14).

I do not propose to discuss each of the above decisions separately; I will content myself with saying that, in my opinion, they do not apply to works done in the circumstances disclosed in the present case. The engineer's certificate is required for the payment of works specified in the contract and of additional work not covered by the contract but ordered by the engineer; I do not think it is a condition precedent to the right of a contractor to be paid for work done to replace works executed in virtue of the contract which have been destroyed or damaged by an act of nature. If the engineer's certificate were to be a condition precedent to the right to be paid for work of that nature, the exception contained in clause 10 of the general conditions might as well be eliminated. The contract is very onerous and oppressive and it must be interpreted strictly.

A question on which I may say a word in passing is that of the production of the various memoranda prepared by respondent's chief engineer or local engineer, which were filed, under reserve of respondent's counsel's objection, as exhibits or part of exhibits 2, 4 and 20.

Objection was made to the production of these documents as being privileged, for two reasons: (*a*) because it was against public interest that they should be filed; (*b*) because they constituted memoranda or reports prepared for the guidance of the Minister with respect to the suppliant's claim.

(1) (1907) 38 S.C.R., 501.
(2) (1915) 17 Ex. C.R., 298.
(3) (1889) 17 S.C.R., 118.
(4) (1877) 7 S.C.R., 634.
(5) (1886) 13 S.C.R., 26.
(6) (1890) 18 S.C.R., 609.
(7) (1891) 19 S.C.R., 685.
(8) (1877) 7 S.C.R., 696.
(9) (1877) 7 S.C.R., 570.
(10) (1895) 25 S.C.R., 564.
(11) (1880) 4 S.C.R., 529.
(12) (1897) 28 S.C.R., 273.
(13) (1896) 26 S.C.R., 203.
(14) (1890) 18 S.C.R., 371.

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I do not think that public policy or public security are in the least concerned in the present case; on the first ground I would have no hesitation to dismiss the objection to the filing of the memoranda in question. The production of these documents could not be prejudicial to public interest; they only deal with the relations of the Crown and the suppliant. The privilege of exclusion of documents as evidence at the request of the Crown must not be extended beyond the requirements of public safety or convenience.

In a case of *Robinson v. State of South Australia* (1) (before the Privy Council on appeal from the Supreme Court of South Australia), Lord Blanesburgh, who delivered the judgment of their Lordships of the Privy Council, says (at p. 714):

> And, first of all, it is, their Lordships think, now recognized that the privilege is a narrow one, most sparingly to be exercised. "The principle of the rule," Taylor points out in his work on Evidence, section 939, "is concern for public interest, and the rule will accordingly be applied no further than the attainment of that object requires."
>
> It is perhaps matter for surprise that the cases illustrating the limitations upon a rule so circumscribed are not more numerous. But their Lordships cannot doubt that the explanation is to be found in the judgment of Rigby L.J. in *Attorney-General* v. *Newcastle-upon-Tyne Corporation* (1897, 2 Q.B. 384, 395), where, himself an ex-law officer, he says: "I know that there has always been the utmost care to give a defendant that discovery which the Crown would have been compelled to give if in the position of a subject, unless there be some plain overruling principle of public interest concerned which cannot be disregarded."
>
> As the protection is claimed on the broad principle of State policy and public convenience, the papers protected, as might have been expected, have been public official documents of a political or administrative character. Yet the rule is not limited to these documents. Its foundation is that the information cannot be disclosed without injury to the public interests and not that the documents are confidential or official, which alone is no reason for their non-production: see *Asiatic Petroleum Co.* v. *Anglo-Persian Oil. Co.* (1916, 1 K.B. 822, 829, 830) and *Smith* v. *East India Co.* (1 Ph. 50).

And at page 715 Lord Blanesburgh adds:

> In view of the increasing extension of State activities into the spheres of trading business and commerce, and of the claim of privilege in relation to liabilities arising therefrom now apparently freely put forward, his observations stand on record to remind the Courts, that while they must duly safeguard genuine public interests they must see to it that the scope of the admitted privilege is not, in such litigation, extended. Particularly must it be remembered in this connection that the fact that production of the documents might in the particular litigation prejudice the Crown's own case or assist that of the other side is no such "plain over-

(1) (1931) A.C., 704.

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ruling principle of public interest" as to justify any claim of privilege. The zealous champion of Crown rights may frequently be tempted to take the opposite view, particularly in cases where the claim against the Crown seems to him to be harsh or unfair. But such an opposite view is without justification. In truth the fact that the documents, if produced, might have any such effect upon the fortunes of the litigation is of itself a compelling reason for their production—one only to be overborne by the gravest considerations of State policy or security.

The second ground of objection invoked by the respondent against the production of the memoranda is more serious.

These memoranda, as already stated, were made for the guidance of the Minister so as to enable him to decide whether the suppliant's claim should be entertained or not. No action had yet been taken when these memoranda were made; there had even been no threat of action. The suppliant had sent in a claim and the matter apparently stood in abeyance, pending the investigation by the Crown. In the event of the dismissal by the Minister of the suppliant's claim, legal proceedings could be anticipated. I think that, in the circumstances, the said memoranda were confidential reports and that they constitute privileged matter: Halsbury's Laws of England, vol. 13, No. 781; *Ankin* v. *London and North Eastern Railway Company* (1); *Ogden* v. *London Electric Railway Co.* (2); Canadian Encyclopedic Digest (Ontario Edition), vol. 3, p. 725 and notes (*f*) and (*g*) at foot of page 726; *Savignac* v. *Montreal Tramways Co.* (3). The objection made by counsel for respondent to the production of the memoranda forming part of exhibits 2, 4 and 20 must be maintained and the said memoranda are accordingly struck from the record.

I may add that I doubt very much whether any statement made by the chief engineer or the local engineer in a memorandum would be binding upon the Crown.

There will be judgment against the respondent for $175,563.63 and costs.

Judgment accordingly.

(1) (1930) 1 K.B., 527. (2) (1932-3) 49 T.L.R., 542.
(3) (1916) 18 P.R. (Quebec), p. 360.