

1900
 June 7.

IN THE MATTER OF THE PETITION OF RIGHT OF
 THOMAS GEORGE BRIGHAM.....SUPPLIANT;
 AND
 HER MAJESTY THE QUEEN.....RESPONDENT.

*Grant of ferry—Breach of—Subsequent lease to railway companies—
 Damages—Liability of Crown—R. S. C. c. 97.*

Under the provisions of R. S. C. c. 97 and amendments, the Governor in Council duly issued to the suppliant a ferry license within certain limits over the Ottawa River between the cities of Ottawa and Hull. Subsequently the Crown leased certain property to two railway companies to be used for the construction of approaches to the Interprovincial Bridge across the said river between the said cities, and also granted permission to the Ottawa Electric Railway Company to extend its tracks over certain property belonging to the Dominion Government on the Hull side of the river, to enable the latter company to make closer connection with the Hull Electric Company. The suppliant claimed that the construction of the said approaches interfered with the operation of his ferry, and enabled the said company to divert traffic from his ferry, and constituted a breach of his ferry grant for which the Crown was liable.

Held, that the granting of the said leases and permission did not constitute a breach of any contract arising out of the grant or license of the ferry; and that the Crown was not liable to the suppliant in damages in respect of the matters complained of in his petition. *Windsor & Annapolis Railway Co. v. The Queen* (10 S. C. R. 335; 11 App. Cas. 607), and *Hopkins v. The Great Northern Railway Co.* (2 Q. B. D. 224) referred to.

Semble: That if the said leases and permission prejudiced the rights acquired by the suppliant under his ferry license, he would be entitled to a writ of *scire facias* to repeal them.

PETITION OF RIGHT asking for damages against the Crown for an alleged breach of the grant of a ferry.

The facts of the case may be summarized as follows:—
 Chapter 97 of R. S. C. provides that the Governor in

Council may issue "ferry licenses" between any two provinces upon public competition therefor.

On the 6th April, 1896, by letters patent under the great seal of Canada, the suppliant duly obtained the license of a ferry across the Ottawa River between the cities of Ottawa and Hull. By the license the ferry was to be operated within the following limits: "On the Ontario side of the river the limits shall be coterminous with the limits of the City of Ottawa; on the Quebec side the limits shall extend from the Union Bridge to the point known as Haycock's Point." By the said license it was, *inter alia*, stipulated and provided that the suppliant should pay to Her Majesty the sum of \$155 per year for his said franchise; that he should provide certain wharves and landings for the public using his ferry; that he should provide a suitable steamer for the purposes of the ferry between the 15th of April and the 25th November in each year; and that a certain number of trips should be made daily.

The suppliant complied with these requirements; but during the currency of his franchise the Crown leased certain lands to the Pontiac and Pacific Railway Company and the Ottawa and Gatineau Railway Company for the purpose of constructing thereon approaches to a bridge to cross the Ottawa River at Nepean Point, to be known as the Interprovincial Bridge. In addition to this the Dominion Government granted permission to the Ottawa Electric Railway Company to extend their tracks from the Union Bridge (between Ottawa and Hull) across certain Government property into the City of Hull, thereby enabling said electric railway to make closer connection with the Hull Electric Railway. The suppliant contended that the work of construction of the said Interprovincial Bridge interfered with the oper-

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ation of his ferry; and that by the extension of the Ottawa Electric Railway into Hull, so authorized by the Dominion Government as above stated, passenger traffic was diverted from his ferry.

He filed a petition of right for damages against the Crown, contending that the license which he had obtained under the provisions of R. S. C. c. 97, was a grant of a ferry, and relying upon the acts of the Crown above set out as constituting a breach of contract arising out of such grant.

April 11th, 1900.

The case was heard at Ottawa.

*H. Aylen Q.C.* for the suppliant :

The Crown in pursuance of its undoubted right, under R. S. C. c. 97, granted the ferry to the suppliant. Section 8 provides for penalties for infringement of ferry rights by third persons. The Crown is liable for breach of contract if it does anything to interfere with the rights arising under the grant. In the case of *Globensky v. Lukin* (1), it was held that the proprietor of a toll-bridge may prevent passengers from being carried over the water by a ferry, within a reasonable distance of his bridge; and the same reasoning would apply to the present case. Aylwin J. there said, (p. 150):

“The privilege thus accorded was the case of a contract between the grantee and the legislature. The former was to make and keep up the bridge, and the latter gave him the exclusive right to receive tolls from persons who crossed.”

The Crown having granted the suppliant an exclusive right of ferriage for a valuable consideration was bound to stay its hand from doing anything to interfere with the profits derivable from the ferry. It was

(1) 6 L. C. J. 145.

guilty of a tortious breach of contract, and is liable in this court.

He cites *Galarneau v. Guilbeault* (1); *Corporation of Aubert-Gallion v. Roy* (2); *Mason v. Harper's Ferry Co.* (3).

The *Solicitor-General* of Canada and *E. L. Newcombe Q.C.* for the respondent, were not called upon.

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THE JUDGE OF THE EXCHEQUER COURT now (April 11th, 1900) delivered judgment.

With reference to the lease to the Pontiac and Pacific Railway Company, and the Ottawa and Gati-neau Railway Company, I am unable to see how by making it the Crown can be held responsible for the acts of the two railway companies, or of their officers or servants. It may be that the suppliant can recover from these companies compensation or damages for the interference with the access to the ferry proved in this case. That is a different question from the one decided in *Hopkins v. The Great Northern Railway Company* (4) in which it was held that the owner of the ferry could not, under the circumstances existing in that case, maintain an action against a railway company for loss of traffic caused by the use of a railway and foot bridge constructed by the railway company to accommodate new traffic. In that case there was no interference with access to the ferry. But whether or not the suppliant might, on the facts proved, recover damages or compensation from the railway companies mentioned, is a question as to which I express no opinion. It is clear, I think, that the making of the lease was not a breach of any contract arising out of the license or lease of the ferry between Ottawa and Hull on which the suppliant relies; and that for the

(1) 16 Can. S. C. R. 579.

(3) 17 W. Virg. 396.

(2) 21 Can. S. C. R. 456.

(4) 2 Q. B. D. 224.

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acts of the railway companies and of their servants the Crown is not in any way responsible.

And the same may, I think, be said of the permission given to the Ottawa Electric Railway Company to extend their track from the bridge over the Ottawa River at the Chaudière into the City of Hull, using a right of way over the reserves and waterways adjoining the roadway leading to the bridge. There can, I think, be no doubt that the closer connection which that company was thereby enabled to make with the Hull Electric Railway Company has diverted traffic from the suppliant's ferry, and that he has suffered damage. But I do not see how he can recover therefor against the Crown. The granting of the permission mentioned to a company having authority, with such consent, for the public convenience, to make the extension, does not, it appears to me, constitute any breach of any contract existing between the suppliant and the Crown.

If the license or permission given to the Ottawa Electric Railway Company referred to, or the lease to the Pontiac and Pacific, and Ottawa and Gatineau Railway Companies, prejudice the rights acquired by the suppliant under his license of the Ottawa and Hull Ferry, as to which no opinion is expressed, he would, it seems to me, be entitled to a writ of *scire facias* to repeal the same (1). But I am not aware that the Crown must itself answer in damages to its grantee where a subsequent grant is made to his prejudice; and the Crown does nothing beyond making the grant. If the suppliant's case came within the principle of the *Windsor and Annapolis Railway Company v. The Queen and the Western Counties Railway Company* (2), he would of course, as I have already intimated, be

(1) *Chitty's Prerogatives of the Crown*, 331.

(2) 10 S. C. R. 335; 11 App. Cas. 607.

entitled to judgment. But so far as I can see it does not. In that case the Crown not only made a lease of the railway in question there to the Western Counties Railway Company to the prejudice of the plaintiffs' rights under an earlier lease, but by its officers it actually dispossessed the plaintiffs and put the Western Counties Railway Company in possession of the railway. Here there has been no dispossession of the suppliant, and no direct interference by the Crown or any of its officers under its direction with the exercise by the suppliant of his rights.

There will be judgment for the respondent, and a declaration that the suppliant is not entitled to any portion of the relief prayed for.

Judgment accordingly.

Solicitors for suppliant: *Aylen & Duclos.*

Solicitor for respondent: *E. L. Newcombe.*

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