

1918

Oct. 9.

IN THE MATTER OF THE PETITION OF RIGHT OF

JOHN E. ASKWITH,

SUPPLIANT;

AND

HIS MAJESTY THE KING,

RESPONDENT.

*Contract—Offer and acceptance—Public work—Approval of Governor-in-Council.*

Where a sum of money was claimed for extras under a contract, a letter by the representative of the debtor to the claimant asking whether he would be willing to accept an amount less than that claimed, and to which letter the claimant replied: "I am willing to accept your offer," is not an accepted and binding contract, but merely a statement that the claimant is willing to accept such sum.

Where a sum of money was claimed to be due by the Crown for extras under a contract made with the Public Works Department, a letter from the Chief Architect of that Department to the claimant saying: "I am directed to offer you the sum of \$4,827 as full and final settlement of all claims you may have against this Department \* \* \* subject to approval of council," does not bind the Crown if the Governor-in-Council refuses to ratify the alleged offer of the Chief Architect.

**P**ETITION OF RIGHT for extras due on a contract.

Tried before the Honourable Mr. Justice Cassels, at Ottawa, June 10, 1918.

*A. E. Fripp*, K.C., for suppliant.

*R. V. Sinclair*, K.C., for respondent.

CASSELS, J. (October 9, 1918) delivered judgment.

A Petition of Right on behalf of John E. Askwith claiming against the Crown for certain extras al-

leged to be due on a contract entered into by the Government of Canada for the erection of a drill hall at Halifax, Nova Scotia.

The petition alleges that the work was fully completed in the year 1901.

The case was tried before me at Ottawa, on June 10, 1918, but owing to pressing engagements I have been unable to consider it until my return from Halifax last week. I have since carefully considered the case and have gone over the evidence and the facts, and remain of the opinion which I entertained at the conclusion of the trial.

The petitioner has failed to make out any case entitling him to relief. The difficulties in the way of the petitioner, having regard to the provisions of the contract, are insuperable—and at the close of his case, Mr. Fripp placed the claim of the petitioner for relief on the supposed contract said to have been entered into by the Crown and the petitioner evidenced by a letter dated October 9, 1914, set out in the petition of right, and an alleged acceptance of October 13, 1914 also set out in the petition.

The two letters are as follows:

“October 9th, 1914.

“John E. Askwith, Esq.,

“24 Alexander St.,

“Ottawa.

“Sir:

“Having reference to your claim amounting to  
 “\$10,656.56, for extra work in connection with the  
 “contract for the drill hall at Halifax, N.S. This  
 “matter has been reported on to the Department,  
 “and I am directed to offer you the sum of \$4,327, as  
 “full and final settlement of all claims you may have

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“against this Department in connection with additional, etc., work on the Halifax drill hall, and to also inform you that the Department is agreeable to allow 5 per cent. interest on the sum named, subject to approval of Council.

“Would you please reply, in writing, stating whether you would be willing to accept the sum of \$4,327, with interest as above mentioned.

“Your obedient servant,

“(Sgd.) E. L. HORWOOD,  
“Chief Architect.”

“24 Alexander St., Ottawa, Ont.,

“October 13, 1914.

“E. L. Horwood, Esq.,

“Chief Architect,

“Dept. Public Works, Ottawa.

“Dear Sir:

“I beg to acknowledge receipt of your letter of the 9th inst., in which you offer me the sum of \$4,327, with interest at five per cent., as full and final settlement of my claim of \$10,656.56, for extra work done at the Halifax drill hall.

“I regret that the loss of certain documents places me in the position that I am unable to fully establish my rights to receive payment of all the items submitted in my claim.

“Under the circumstances I beg to state that I am willing to accept your offer of \$4,327, with the interest named, as full and final settlement of all claims I have against the Department of Public Works in connection with the Halifax drill hall.

“Yours very truly,

“(Sgd.) J. E. ASKWITH.”

Some discussion took place as to whether or not the words "subject to approval of council" refer merely to the interest or to the sum of \$4,327 as well. In my opinion it is not of much consequence which meaning is placed upon this letter, for the reason that the petitioner in his letter of October 13, states he is willing to accept the offer of \$4,327, with interest named, etc.

Even if the Crown could be bound by such a contract, the letters are not evidence of an accepted and binding contract. The letter of the architect is a mere request to know if the petitioner would be willing to accept the named sum, together with interest. It is apparent that at all events the approval of the Governor-in-Council was requisite before any offer of the whole sum, with interest added, could be binding.

The so-called acceptance is a statement that the petitioner is willing to accept the principal money, together with interest. The Governor-in-Council refused to ratify the offer of the architect. The result is that if, as I have mentioned, the Crown could have been bound there has been no contract entered into between the parties.

I think the petition must be dismissed and with costs.

*Petition dismissed.*

Solicitors for suppliant: *Fripp & McGee.*

Solicitor for respondent: *R. V. Sinclair.*

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