

HON. MR. JUSTICE SUTHERLAND.

APRIL 28TH, 1914.

FAUQUIER v. KING.

6 O. W. N. 310.

Contract—Railway Construction—Material Supplied and Services Rendered—Claim for Balance of Contract Price—Counterclaim.

SUTHERLAND, J., gave plaintiff judgment for \$5,315.24 and costs and dismissed defendant's counterclaim, in an action to recover \$6,475.84 as balance alleged due on account of services rendered and material supplied by plaintiff to defendant and money paid by plaintiff for defendant in connection with the construction of the Transcontinental Railway under an agreement.

F. H. Chrysler, K.C., and C. J. R. Bethune, for plaintiffs.
J. F. Smellie, for defendant.

HON. MR. JUSTICE SUTHERLAND: — In this action the plaintiffs, who had a contract from the National Transcontinental Railway Commission for the construction of about 100 miles of the Transcontinental Railway, from a point near Cochrane station westerly, with the exception of the stations and steel bridges, and who had so far performed it as that the rails had been laid and the ballasting was being completed, and who in connection with their own work operated trains along the line of railway covering their district, entered into a contract, in the month of December, 1911, with the defendant, who also had a contract from the Commission to erect the stations on the plaintiffs' section.

The initial arrangement was made between the defendant and one Chamberlain, as general manager of construction for the plaintiffs, at a place on their section, known as Grond Hog river, about 50 miles west of Cochrane. Chamberlain said that the arrangement was as follows: "King asked me for a rate on his freight for the contract that I was manager of. I said I would give him the same rate that we were charging our sub-contractors, which was \$1 per car per mile for full carloads. He said he did not wish a rate on less than carload lots as his material would all come in full carload lots."

"Q. To what class of freight did you refer? A. Well, it was material for stations, like lumber, brick, etc., anything that went to make up a station outside of the foundation.