

Railway, was sold under order of the Exchequer Court of Canada on the 8th November, 1905. The suppliants acquired all the rights of the vendee under the sale in 1906, and became incorporated by Act of Parliament in that year for the purpose of holding, maintaining and operating the said railways under the name of the Quebec, Montreal and Southern Railway Company. In 1899, by 62-63 Vict. ch. 7, sec. 2, sub-sec. 27, the Governor-in-Council was authorized to grant a subsidy to the South Shore Railway Company from S. J. to L., "a distance not exceeding 82 miles." The South Shore Railway Company previous to January, 1902, constructed some 18½ miles of the projected railway, and was paid a subsidy for 12 miles, but the subsidy for the balance so constructed, namely, 6½ miles, was never paid to any one, presumably because the statutory requirements were not fulfilled. In 1903, by 3 Edw. VII. ch. 57, sec. 2, sub-sec. 12, the subsidy of 1899 was renewed, not in favour of the South Shore Railway Company in particular, but a general grant was made towards the construction of a line of railway from Y. to L. (including the 6½ miles in question), a distance not exceeding 70 miles, "in lieu of the subsidy granted by item 27 of sec. 2 of ch. 7 of 1899." The South Shore Railway did avail itself of this subsidy, and it lapsed. In 1908, by 7-8 Edw. VII. ch. 63, sec. 1, sub-sec. 14, the subsidy last mentioned was renewed, the Act providing that "the Governor-in-Council may grant a subsidy," but it was provided that the railway subsidized was to be completed before 1st August, 1910. The suppliants built the railway so subsidized. Upon a petition of right filed by the suppliants to recover subsidy in respect of the said 6½ miles not constructed by them but by the South Shore Railway Company:—

*Held*, 1. The language of 7-8 Edw. VII. ch. 63, sec. 1, sub-sec. 14, must be read as permissive and not mandatory, and that a petition of right to recover the subsidy would not lie where the same has not been paid by the Governor-in-Council. *Canadian Pacific Ry. Co. v. The King*, 38 S.C.R. 137, followed.

2. A contract entered into between the Crown and the suppliants for the payment of the subsidy in question, founded on an order-in-council passed on the assumption that the suppliants had constructed the 6½ miles in question, which the suppliants had not in fact done, cannot be enforced; and if moneys had been paid under such contract they could have been recovered back by the Crown under Arts. 1040 and 1048, C.C.P.Q.

3. The Crown is not bound by an order-in-council passed inadvertently and on mistake of fact. *De Galindez v. The King*, Q.R. 15 K.B. 320, 39 S.C.R., 682, followed.