

only novel element in the patented article, and that the device used by H. was not an infringement of the patent depending on the tape to render it patentable.

Appeal dismissed with costs.

*W. Cassels, Q.C., and Edgar* for the appellants.

*Johnston, Q.C., and Heighington* for the respondents.

Exchequer Court.]

[May 8.]

MAYES v. THE QUEEN.

*Contract—Public work—Special quality of timber—Inspection—Change in terms of contract—Authority of engineer—Delay.*

M. contracted with the Dominion Government to build a bridge in connection with a railway under construction in Nova Scotia. The contract called for the use of creosoted pine timber, of which the creosoting could only be done in South Carolina. By one clause in the contract no change could be made in its terms without an Order in Council therefor, and by another clause M. was not to bring any suit or proceeding for damages caused by delay.

The timber was procured in South Carolina, and M. wrote to the engineer asking for an inspection. The engineer undertook to send an inspector to South Carolina, but neglected to do so for some weeks, and M. was put to greater expense in transporting it to Nova Scotia by reason of the delay. Having proceeded against the Crown for damages, a demurrer was filed to his petition of right.

*Held*, affirming the decision of the Exchequer Court (2 Ex. C. R. 403), that by the express terms of the contract the Crown was not liable; that the engineer could not bind the Crown by entering into a supplementary contract for inspection, and that M. had by his covenant no cause of action based on delay.

Appeal dismissed with costs.

*Pugsley, Q.C.*, for the suppliant.

*W. H. B. Ritchie* for the Crown.

Ontario.]

[May 22.]

FRANK v. SUN LIFE ASSURANCE CO.

*Life insurance—Payment of premium—Contract dehors the policy—Avoidance of policy.*

A policy of life insurance contained no condition making it void in case of non-payment of premiums, or any note, etc., given for a premium. The first premium was not paid in cash, but the assured signed and gave to the company an agreement in the form of a promissory note, payable at a certain time for part, and a like agreement payable at a later period for the other part, each of said documents containing an undertaking by the assured that if it was not paid when due the policy should be void. The assured died after the time for payment of the first agreement, but before the second had matured, and leaving the first unpaid.