

plant, etc., for executing and completing all the works set out or referred to in the specifications, namely, "all the dredging of the Cornwall Canal on section No. 8 (not otherwise provided for)" on a date named; "that the several parts of this contract shall be taken together to explain each other, and to make the whole consistent; and if it be found that anything has been omitted or mis-stated, which is necessary for the proper performance and completion of any part of the work contemplated, the contractors will, at their own expense, execute the same as though it had been properly described;" and that the engineer could, at any time before or during construction, order extra work to be done, or changes to be made, either to increase or diminish the work to be done, the contractors to comply with his written requirements therefor. By sec. 34 it was declared that no contract on the part of the Crown should be implied from anything contained in the signed contract, or from the position of the parties at the time. After a portion of the work had been done the Crown abandoned the scheme of constructing dams contemplated by the contract, and adopted another plan, the work on which was given to other contractors. After it was completed the suppliants filed a petition of Right for the profits they would have made had it been given to them.

*Held*, affirming the judgment of the Exchequer Court, 7 Ex. C.R. 221, that the contract contained no express covenant by the Crown to give all the work done to the suppliants and sec. 34 prohibited any implied covenant therefor. Therefore the petition of right was properly dismissed. Appeal dismissed with costs.

*Aylesworth*, K.C., and *Belcourt*, K.C., for appellants. *Newcombe*, K.C., Deputy Minister of Justice, for respondent.

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[Dec. 12, 1902.]

SAULT STE. MARIE PULP CO. v. MYERS.

*Negligence--Injury to workman--Proximate cause--Ontario Factories Act.*

A workman in a pulp factory whose duty it was to take the pulp away from a drier, had to climb up a step ladder to get on a plank in front of the drier. The step-ladder was movable and placed close to a revolving cog wheel. On returning from the drier on one occasion another workman accidentally or intentionally, removed the ladder as he was about to step upon it and before he could recover his balance his leg was caught in the cog wheel and so crushed that it had to be amputated. In an action against the factory owners the jury found that the injured workman was not negligent or careless; that the removal of the ladder would not have caused the accident if the wheel had been properly guarded, and the ladder fastened to the floor; and that the non-guarding and fastening was negligence of the defendants.