

Quebec.]

HEREFORD RAILWAY CO. v. THE QUEEN.

[Oct. 9, 1894.

51 & 52 Vict., c. 91, ss. 9, 14 (P.Q.)—*Interpretation Act*, s. 19, R.S.Q.—*Railway subsidy—Discretionary power of Lieutenant-Governor in Council—Petition of right—Misappropriation of subsidy moneys by order in council.*

Where money is granted by the legislature, and its application is prescribed in such a way as to confer a discretion upon the Crown, no trust is imposed enforceable against the Crown by petition of right.

The appellant railway company alleged by petition of right that by virtue of 51 & 52 Vict., c. 91, the Lieutenant-Governor in Council was authorized to grant 4,000 acres of land per mile for thirty miles of the Hereford railway; that by an order in council, dated 6th August, 1888, the land subsidy was converted into a money subsidy, the 9th section of said c. 91, 51 & 52 Vict., enacting that "it shall be lawful," etc., to convert; that the company completed the construction of their line of railway, relying upon the said subsidy and order in council, and built the railway in accordance with the Act 51 & 52 Vict. c. 91, and the provisions of the Railway Act of Canada, 51 Vict., c. 29, and they claimed to be entitled to the sum of \$49,000, balance due on said subsidy. The Crown demurred, on the ground that the statute was permissive only, and by exception pleaded, *inter alia*, that the money had been paid by order in council to the sub-contractors for work necessary for the construction of the road; that the president had by letter agreed to accept an additional subsidy on an extension of their line of railway to settle difficulties, and signed a receipt for the balance of \$6,500 due on account of the first subsidy.

The petition of right was dismissed.

Held, that the statute and documents relied on did not create a liability on the part of the Crown to pay the money voted to the appellant company enforceable by petition of right, TASCHEREAU and SEDGEWICK, JJ., dissenting; but, assuming it did, the letter and receipt signed by the president of the company did not discharge the Crown from such obligation to pay the subsidy, and payment by the Crown of the sub-contractors' claim out of the subsidy money without the consent of the company was a misappropriation of the subsidy.

Appeal dismissed with costs.

Brown, Q.C., and Stuart, Q.C., for the appellants.

Drouin, Q.C., for the respondent.

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ANGUS v. THE UNION GAS AND OIL STOVE CO.

[Jan. 15.

Patent of invention—Business agreement to manufacture under—Letter of guarantee—Failure of scheme—Liability of guarantor.

The chief object of an agreement between A. and B. was the profitable manufacture and sale of wares under a patent of invention issued to A., and, in consideration of advances by B. to the amount of \$6,000, C. by a letter of guarantee "agreed to become a surety to B. for the repayment of the \$6,000, if within twelve months from the date of the agreement it should transpire that, (if, for the reasons incorporated in said agreement, it should not be carried." On an