

duced was not signed by the Prothonotary of the court out of which it was issued.

*Held*, that it is the seal of the court which gives validity to such writs and not the signature of the officer, and the want of such signature did not affect the validity of the execution.

Appeal allowed with costs.

*W. B. Ross* for the appellant.

*Eaton, Q.C.*, for the respondent.

THE QUEEN, Appellant & ROBERT MCGREEVY,  
Respondent.

On appeal from the Exchequer Court of Canada. Present Sir W. J. Ritchie, C. J., and Strong, Taschereau, Gwynne and Patterson, JJ.

*Claim for extra and additional work due under Intercolonial Railway contract—31 Vic. c. 13, secs. 16, 17, 18—and 37 Vic. ch. 15—Change of Chief Engineer before final certificate given—Reference of suppliant's claim to said Engineer—Report or certificate of Chief Engineer recommending payment of a certain sum—Effect of—Approval by Commissioners or Minister necessary.*

Upon a claim made by the respondent for the sum of \$120,371 as being due to him for extra work etc. beyond what was included in his contract for building a section of the Intercolonial Railway, and which sum he alleged had been certified by F. S. as the Chief Engineer of the Intercolonial Railway in his final and closing certificate given in accordance with clause 11 of respondent's contract, a statement of admission was agreed upon by both parties and the following question was submitted to the Exchequer Court: "Is the suppliant entitled to recover on the report or certificate of F. S.? The report was never approved of by the Intercolonial Railway Commissioners, or by the Minister of Railways and Canals, and 31 Vic. ch. 13, sec. 18, enacts: "No money shall be paid to any contractor until the Chief Engineer shall have certified that the work for, or on account of which the same shall be claimed has been fully executed, nor until such certificate has been approved by the Commissioners."

*Held*, 1st, *Per Ritchie, C. J.*, and Gwynne, J., reversing the judgment of the Exchequer Court, that the report of F. S., assuming him to have been the Chief Engineer to give the final certificate under the contract, cannot be construed to be a certificate of the Chief Engineer which does or can entitle the contractor to recover any sum as remaining due and payable to him under the terms of his contract, nor can any legal claim whatever against the Government be founded thereon.

2nd. *Per Ritchie, C. J.* That the contractor was not entitled to be paid anything until the final certificate of the Chief Engineer was approved of by the Commissioners or Minister of Railways and Canals. 31 Vic., ch. 13, sec. 18, and 37 Vic., ch. 15, *Jones v. Queen*, 7 Can. S. C. R. 57.

3rd. *Per Patterson, J.*, that although F. S. was duly appointed Chief Engineer of the Intercolonial Railway, and that his report on suppliant's claim may be held to be the final and closing certificate to which he was entitled under the 11th clause of the contract, yet as it is provided by the 4th clause of the contract that any allowance for increased work is to be decided by the Commissioners, the suppliant is not entitled to recover on F. S.'s certificate.

*Per Strong and Taschereau, JJ.*, (dissenting) that F. S. was the Chief Engineer and as such had power under the 11th clause of the contract to deal with the suppliant's claim, and that his report was "a final and closing certificate" entitling the respondent to the amount found by the Exchequer Court on the case submitted.

*Per Strong, Taschereau and Patterson, JJ.* That the Office of Commissioners having been abolished by 37 Vic., ch. 15, and their duties and powers transferred generally to the Minister of Railways and Canals, the approval of the certificate was not a condition precedent to entitle the suppliant to claim the amount awarded to him by the final certificate of the Chief Engineer.

Appeal allowed with costs.

*Robinson, Q. C.*, and *Hogg, Q. C.*; for appellant.

*Girouard, Q. C.*, and *Ferguson, Q. C.*, for respondent.