

1895 THE JACQUES-CARTIER BANK } APPELLANT;
 *Oct. 2, 3. (PLAINTIFF)..... }
 Dec. 9.

AND

HER MAJESTY THE QUEEN (DE- } RESPONDENT.
 FENDANT)..... }

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
 LOWER CANADA (APPEAL SIDE).

*Constitutional law—Powers of Executive Councillors—“ Letter of credit ”—
 Ratification by Legislature—Obligations binding on the province—
 Discretion of the Government as to the expenditures—Petition of Right
 —Negotiable instrument—“ Bills of Exchange Act, 1890 ”—“ The
 Bank Act,” R.S.C. c. 120.*

The Provincial Secretary of Quebec wrote the following letter to D.
 with the assent of his colleagues, but not being authorized by
 order in council :

J'ai l'honneur de vous informer que le gouvernement fera voter,
 dans le budget supplémentaire de 1891-92, un item de six mille
 piastres qui vous seront payées immédiatement après la session, et
 cela à titre d'acompte sur l'impression de la “ Liste des terres de
 la Couronne, concédés depuis 1763 jusqu'au 31 décembre 1890,”
 dont je vous ai confié l'impression dans une lettre en date du 14
 janvier 1891.”

“ Cette somme de six mille piastres sera payée au porteur de la
 présente lettre, revêtue de votre endossement.”

D. indorsed the letter to a bank as security for advance to enable him
 to do the work.

Held, affirming the judgment of the Court of Queen's Bench, that the
 letter constituted no contract between D. and the Government ;
 that the Prov. Sec. had no power to bind the Crown by his
 signature to such a document; and that a subsequent vote of the
 legislature of a sum of money for printing “ liste des terres de la
 Couronne,” etc., was not a ratification of the agreement with
 D. the Government not being obliged to expend the money
 though authorized to do so and the vote containing no reference
 to the contract with D. nor to the said letter of credit.

*PRESENT :—Sir Henry Strong C.J., and Taschereau, Gwynne,
 Sedgewick, King and Girouard JJ.

Held also, that a bank cannot deal in such securities as the said letter of credit which is dependent on the vote of the legislature and therefore not a negotiable instrument within the Bills of Exchange Act of 1890 or The Bank Act, R.S.C. ch. 120 secs. 45 and 60.

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APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side), confirming a judgment of the Superior Court, District of Quebec, by which the appellant's petition of right was dismissed.

The facts appear fully in the judgment of Mr. Justice Girouard, the questions to be decided being shortly, whether the Provincial Secretary had power to bind the province by the letter to Dussault, set out in the above head-note, and if not, whether the subsequent vote of the amount by the legislature ratified his action in such a manner as to make the payment of the money obligatory upon the Government. Incidentally the questions were raised as to whether the "Letter of Credit" was a negotiable instrument, and if it could be accepted as a security under the provisions of the Bills of Exchange Act of 1890 and "The Bank Act."

Langelier Q.C. and *Mackay* for the appellant. The plaintiff's claim is not founded on the letter of credit alone, but on the contract contained in it, coupled with the vote of the legislature to pay for the work.

The Crown has had the benefit of Dussault's work, and is liable even if the contract entered into by the provincial secretary was not authorized.

After the legislature had ratified the contract made by the provincial secretary and the money was voted, Dussault had a vested right in such money and the plaintiff, as his assignee, is in the same position.

To say that this right is to be denied for want of an order in council, is to put the lieutenant-governor in council above the legislature.

Casgrain Q.C., Attorney-General for Quebec, and *Darveau* Q.C. for the respondent. A member of the

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executive council cannot bind the Crown by a mere undertaking that money will be voted to pay for work to be done. R.S.Q., art. 707, provides for the powers and duties of the provincial secretary and shows that this letter of credit, so-called, was a nullity.

Then if the letter was a nullity it could not be ratified or confirmed. Art. 1214 C.C.; Dal. (1); Aubry & Rau (2); Brice on *Ultra Vires* (3); *Banque Jacques-Cartier v. La Banque d'Epargne* (4).

Whatever value the letter might have had the plaintiff has no *locus standi* to enforce it. It was not a negotiable instrument, and the indorsement to the bank had no effect. The Bank Act of 1890 (5), specifies what securities can be transferred to a bank, and this letter is not negotiable under that section.

Even if it could have been ratified the legislature was not in possession of all the facts, without which there could be no acquiescence or ratification.

The vote of the legislature authorized the government to expend the money, but did not oblige them to do so. *Hereford Railway Co. v. The Queen* (6).

THE CHIEF JUSTICE.—I concur in the judgment prepared by Mr. Justice Girouard in this case.

TASCHEREAU J.—I also concur in the opinion of Mr. Justice Girouard.

GWYNNE J.—There exists, in my opinion, no ground whatever upon which this appeal can be maintained. The letter of Mr. Langelier of the 14th January, 1891, to Mr. Dussault, constituted no contract between Mr. Dussault and the provincial government; so neither

(1) Rep. vo. Obligation p. 947, (3) 3 ed. p. 627.  
 no. 4470. (4) 13 App. Cas. 111.  
 (2) Vol. 4, pp. 262, 266. (5) 53 Vic. c. 31, s. 64.  
 (6) 24 Can. S.C.R. 1.

did Mr. Langelier's letter of the 24th January, 1891. This letter contained a promise which, inasmuch as it does not appear to have been made by, or by the authority of, the provincial government had no obligation or effect, further than as the promise of Mr. Langelier himself to the effect that if the provincial legislature should, in the estimates of 1891-2, vote the sum of \$6,000 for printing the list of Crown lands granted since 1763 up to the 31st December, 1890, of which work the letter adds,

je vous ai confié l'impression dans une lettre en date du 14 Janvier 1891,

such sum should be paid to Mr. Dussault immediately after the session. This letter also contained the words following :

Cette somme de six mille piastres sera payée au porteur de la présente lettre revêtue de votre endossement.

Dussault indorsed this letter in manner following :

Payé au Porteur.

JOSEPH DUSSAULT.

and handed it to the bank, the now appellants. Now the provincial government, not having been bound by anything contained in these letters, could not, and indeed it is admitted that Dussault did not, by the above indorsement, thereon, vest in the bank any claim enforceable in law against the provincial government in virtue of the so-called letter of credit, and that was conceded by the appellant. However, by an Act of the legislature of the province of Quebec passed upon the 24th day of June, 1892, that legislature granted to Her Majesty, in the supply bill of that year, the sum of \$9,872.65, in the terms following :

For various works of Canadian authors, collection de monnaies et médailles ; account for printing liste des terres de la couronne depuis 1763 jusqu'au 31 Déc. 1890, and other accounts for sundry expenditure.

And now it is contended that the effect of this

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vote was to make the letter of the 24th January, 1891, a contract binding upon the Government of the province of Quebec, although that letter by itself had no such effect, and to vest in Dussault an absolute right to demand and recover from the Government the said sum of \$6,000, and further that as the bank upon the 30th day of June, 1892, six days after the close of the session, caused an authorized notarial protest and signification of the transfer by Dussault to the bank of the said letter of the 24th January, 1891, by indorsement thereon to be served upon the Government, the bank thereby became entitled to demand and recover from the Government the said sum of \$6,000 ; in short that we must assume that by this vote the legislature contemplated imposing upon the Provincial Government an obligation which had never been incurred by the Government, and so in effect to relieve the Government of the province from its constitutional responsibility for the application of so much of the \$9,872.65 as related to the purpose of printing the list mentioned in the item which contained the grant. If the legislature had entertained any such singular, if not unconstitutional, intention they should have expressed themselves in language clear and express beyond all controversy ; from the language which they have used no such intention can be inferred. The plain and natural construction of the item containing the grant of the \$9,872.68, is that this sum is granted to Her Majesty to be expended for the purposes named in the grant, at the discretion of the Provincial Government, but subject to the ordinary control of Parliament over the manner in which all moneys granted to the Crown for specific purposes shall be expended, and did not divest the Government of its duty to see to the proper application of the moneys, or impose upon the Government a contract it had never entered into nor authorized.

The appeal must be dismissed with costs.

SEDGEWICK and KING JJ. concurred.

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GIROUARD J.—The appellants, by their petition of right, claim from the province of Quebec the sum of \$6,000 and interest from the 29th June, 1892, being the amount due on a certain letter, commonly styled a letter of credit, signed by the honourable Charles Langelier, provincial secretary, payable to Joseph Dussault, or order, and indorsed by Dussault to the appellants.

Girouard J.

It appears that on the 29th December, 1890, the legislative assembly of Quebec passed the following resolution :

That there be laid before this House an alphabetical index of the concessions of land made by the Crown since 1763 as far as December 1st, 1890, county by county and township by township.

On the 14th of January, 1891, the provincial secretary wrote the following letter to Joseph Dussault, printer, of Québec :

Bureau du Secrétaire de la Province de Québec.

CABINET DU MINISTRE,

QUEBEC, 14 Janvier 1891.

Monsieur JOSEPH DUSSAULT, Québec.

MONSIEUR,—A la dernière session, l'Assemblée Législative a voté une adresse demandant la production d'une " Liste comté par comté, canton par canton, de toutes les terres de la Couronne concédées depuis 1763, jusqu'au 31 décembre 1890.

Plusieurs personnes, notamment des registrateurs, ayant déjà demandé la publication de ce document, j'ai décidé de la faire imprimer et je vous en confie par la présente l'impression, dans les deux langues, et cela aux prix et conditions actuellement en force pour les contrats d'impression de la législature.

La copie vous sera fournie par M. le député-registrateur dont vous devrez suivre les directions quant à la confection de l'ouvrage, au format du volume et au nombre d'exemplaires à tirer, en français et en anglais.

J'ai l'honneur d'être, Monsieur,

Votre obéissant serviteur,

CHS. LANGELIER,

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On the 24th January, 1891, the provincial secretary issued the following so-called letter of credit :

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MONSIEUR,—J'ai l'honneur de vous informer que le Gouvernement fera voter, dans le budget supplémentaire de 1891-92, un item de six mille piastres qui vous seront payées immédiatement après la session, et cela à titre d'acompte sur l'impression de la "Liste des terres de la Couronne, concédées depuis 1763 jusqu'au 31 décembre 1890," dont je vous ai confié l'impression dans une lettre en date du 14 Janvier 1891.

Cette somme de six mille piastres sera payée au porteur de la présente lettre, revêtue de votre endossement.

Croyez-moi bien sincèrement

Votre tout dévoué,

CHS. LANGELIER,

Secrétaire de la province.

This letter of credit as well as the contract, were made without the authority of an order in council.

An appropriation was voted by the Legislature of Quebec, at the session held in 1892, which will be found as item 15, schedule A of the statutes of the province of Quebec, 55 & 56 Vic. ch. 1, in the following words:—

15. For various works of Canadian authors, collection des monnaies et médailles, account for printing liste des terres de la Couronne concédées depuis 1763. jusqu'au 31 décembre 1890, and other documents for sundry expenditure, \$9,872.65.

From the evidence of Mr. Verret, provincial auditor, it appears that the amount of the "letter of credit" was included in the sum of \$9,872.65, but this information was not communicated to the House, nor was the contract with Dussault or the letter of credit made known.

The appellants fyled their petition of right on the 21st April 1893, alleging that the letter of credit had been transferred to them to enable Dussault to commence the work of printing. The action is based upon the letter of credit only, and not upon the transfer of

moneys that might become due under the contract ; in fact such an action could not be taken as the work was only about half done when the petition of right was filed and not even commenced when the letter of credit was signed.

The respondents met this action by what may be termed a general denegation, coupled with a general averment that all these transactions and dealings were *ultra vires* and illegal.

The action was dismissed by the Superior Court (Andrews J.), and his judgment was confirmed by the Court of Appeal on the 3rd May 1895, Blanchet J. dissenting. We have not before us the remarks of the learned judges who formed the majority of the Court of Appeal, and we must assume that they agreed in the reasons given by the learned judge of the Superior Court. Mr. Justice Blanchet has sent the notes of his dissent.

Mr. Justice Andrews had no hesitation in declaring that no power exists in a member of the executive to bind the province by his signature to a document such as that claimed on by the appellants, and such is also the opinion of Mr. Justice Blanchet ; in fact this point was conceded by counsel for the appellant at the bar of this court. The order of the Assembly in 1890 was only to the effect that the "alphabetical index" should be laid before the House. No authority was ever given to print the same, and it does not appear that the index ever was laid before the House. With regard to the printing of old papers, manuscripts and archives, art. 718 R.S.Q. entrusts the lieutenant-governor in council with the printing of the same, in whole or in part. Therefore the alphabetical index in question could not have been printed upon the mere order of a minister.

Mr. Justice Blanchet and the appellants relied upon the appropriation by the legislature as a sufficient rati-

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fiction. Mr. Justice Andrews entertains a different view, which was affirmed on appeal. He says;—

The question therefore arises : Is this a ratification of the issue of the letter of credit sued on, and of a character such as to make of it a document obligatory on the province and giving rise to a right of action in favour of the bank, as holding it? I do not think so. It certainly put it in the power of the executive to pay the amount, but it did not force them to do so. Mr. Todd, vol. 2, page 43, says :

“ A vote in Committee of Supply is in the nature of a maximum. It is not imperative on the Government to spend the whole or any part of the amount granted, but it is a matter of discretion.”

It is very hard to understand how a ratification can result from the vote of the Assembly worded as it is, viz :

Liste des terres de la Couronne concédées depuis 1763 jusqu'au 31 décembre, 1890, and other documents.

No reference is made to the contract with Dussault, nor to the letter of credit, and it is a well settled jurisprudence that acquiescence and ratification must be founded on the full knowledge of the facts. *La Banque Jacques-Cartier v. La Banque d'Epargne* (1); Dalloz (2); Art. 1214 C.C.

The appellants have relied upon the opinion of Chief Justice Lacoste in *The Queen v. Waterous Engine Works Co.* (2); but the learned Chief Justice was also of the opinion that the minister had no power to bind the Crown by a contract similar to the one in question in this cause without an order in council, and he merely dissented in view of the fact, proved in the case, that the work had been done, delivered and accepted by the Government. His remarks, therefore, do not apply to the present case. It will be time to examine whether Dussault, or the appellants as his transferees, are entitled to anything at all from the

(1) 13 App. Cas. 118.

(2) Rep. no. 4504 et seq.

(3) Q. R. 3 Q. B. 223.

Government for work and labour when a proper suit has been brought therefor. The present action is for money lent by a bank upon an alleged guarantee of the province, and I have no hesitation in saying that the province is not liable.

Finally, it seems to me that the bank could not deal in such securities as the one sued upon in the present instance. The letter of credit is conditional, viz : it is dependent upon the vote of the legislature, and therefore, it cannot be held to be a negotiable instrument either within the Bills of Exchange Act of 1890, or within the Bank Act then in force, R. S. C. ch. 120, ss. 45, 60. Banks dealing with Governments, or in Government securities, should carefully examine not only the powers of the persons acting on their behalf, but also the paper offered by them, and if they fail to do so it is at their risk and peril. They have only themselves to blame if ultimately they are without a legal remedy, especially in a case like the present where the transaction on its face is stamped with illegality. The only recourse left to them is a political one, but it is hardly necessary to say that that is beyond the province of a court of justice.

For these reasons, I am of opinion that the appeal should be dismissed with costs, and the judgment appealed from affirmed.

*Appeal dismissed with costs.*

Solicitor for the appellant: *P. Mackay.*

Solicitor for the respondent: *Chs. Darveau.*

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