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TUCKER *v.* THE KING.

1902

\*May 14.

\*May 29.

*Crown—Contract—Right of action—Public officer—Solicitor and client—  
R. S. C. cc. 114, 115—Inquiry as to public matters—Remuneration  
of Commissioner—Quantum meruit.*

Judgment appealed from (7 Ex. C. R. 351) affirmed, the Chief Justice and Girouard J. dissenting.

APPEAL from the judgment of the Exchequer Court of Canada (1) by which a demurrer to the suppliant's petition of right was maintained and the petition of right dismissed with costs.

The suppliant, an advocate of the Province of Quebec, claimed by his petition of right the payment of \$800 for services rendered by him as a commissioner appointed under the Revised Statutes of Canada, chs. 114 and 115, to make inquiry and report upon misconduct of a servant or officer of the Crown, alleged to have been of a judicial as well as inquisitorial character, the duty he performed requiring a

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

(1) 7 Ex. C. R. 351.

knowledge of law and the rules of evidence. The suppliant claimed that his remuneration should be calculated and taxed according to the scale of fees allowed in similar matters for professional services by counsel or solicitors to clients.

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The Crown demurred on the grounds that the petition of right did not allege, nor did the facts set out disclose, any contract between the suppliant and the Crown, either express or implied, or any other matter giving rise to any obligation or right of action against the Crown. The appeal was asserted by the suppliant against the judgment of the Exchequer Court (1), maintaining the demurrer and dismissing the petition of right with costs.

After hearing counsel for the parties the court reserved judgment and, on a subsequent day, the appeal was dismissed with costs, His Lordship the Chief Justice and Mr. Justice Girouard dissenting. There were no written notes of the reasons for the judgment of the majority of the court delivered. The following notes for his dissenting judgment were delivered by :

GIROUARD J.—I think that the decision of the Privy Council in *The Queen v. Doutré* (1) is in point.

The appellant was not a public officer, he was an advocate of the Province of Quebec specially retained and commissioned to perform certain temporary duties in that province on behalf of the Crown which his professional attainments specially qualified him to discharge. Can it be pretended that he would not be entitled to the *quantum meruit* of his services, if they had been rendered to a subject? Undoubtedly an action would lie in such a case. An advocate requested by a subject to make an inquiry into a matter in which

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(1) 9 App. Cas. 745.

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he may be interested, requiring professional skill and experience, has a right of action for the value of the work accomplished by him, whether in or out of a court of justice. I cannot see how a distinction can be made when the Crown is the client. The Privy Council has held that none exists and I am not prepared to make one. In my opinion the appeal should be allowed with costs.

*Appeal dismissed with costs.*

*Leet K.C.* for the appellant.

*Newcombe K.C.* for the respondent.

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