

1915  
May 19.

IN THE MATTER OF THE PETITION OF RIGHT OF  
 GEDEON BEAULIEU.....SUPPLIANT,

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Contract—Extra work—Certificate of engineer.*

There can be no recovery for extra work performed in connection with a contract entered into with the Crown, in the absence of an authorization and certificate of the chief engineer required by the stipulations of the contract. The Court, under sec. 48 of the *Exchequer Court Act*, is bound to adjudicate upon the claim in accordance with the stipulations.

**P**ETITION OF RIGHT to recover for extra work.

Tried before the Honourable Mr. Justice Audette,  
 at Quebec, April 14, May 10, 1915.

*P. J. Jolicoeur*, for suppliant.

*V. de Billy*, for respondent.

AUDETTE, J. (May 19, 1915) delivered judgment.

The suppliant brought his petition of right to recover the sum of \$3,718.50 for alleged extra works executed in connection with his contract between himself and the Crown, bearing date December 11th, 1895, and filed of record as Exhibit No. 2,—including also in that amount the sum of \$30 as a balance still due under the said contract and a further sum of \$500 he would have realized in profit had the engineer allowed him to build the wall in question herein 2 feet higher, namely, of 9 feet instead of 7 feet, as called for by the contract and specifications.

This contract is for the lump sum of \$4,480. The contractor acknowledges having received the full amount of the contract price, less \$30, which, however, his counsel at trial abandoned, but which becomes of no effect, as will be hereafter shown.

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From the evidence at trial the suppliant would appear to have been paid, in satisfaction of the said contract, in four several cheques to his order from the Department of Finance, the sum of \$4,450.

The final certificate of the chief engineer certifies that the suppliant is entitled to recover in full satisfaction of the works executed under his contract, together with authorized extras, the full sum of \$4,966. This sum is made up as follows:

The sum of .....	\$4,480.00
amount of the contract, with the sum of ...	276.00
for two culverts, duly authorized by the chief engineer, together with the further sum of .....	210.00
for three hundred yards of extra filling, making in all the sum of .....	\$4,966.00

The total amount of the sum covered by the chief engineer's certificate has been paid in the following manner, viz. ....	\$4,450.00
direct to the suppliant in the manner above mentioned, together with sum of .....	516.00
for labour performed in connection with the said contract, pursuant to clause 22 thereof, after giving due notice, which is admitted by the suppliant in his evidence: making in all the sum of .....	\$4,966.00

Under the several clauses of the contract entered into the suppliant at bar, as a condition precedent

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to his recovery, must have a certificate from the chief engineer, and for any extra work authority from the same officer estimating further the value of such work. The final certificate is only for the said sum of \$4,966, and in the absence of the certificate for any further amount, the suppliant must fail. Cases of this kind have come before this Court for adjudication so very often that it is thought unnecessary to cite here a long chain of decisions establishing the principle involved in the present case, which principle indeed has been dealt with and considered both by the Supreme Court of Canada and by the Judicial Committee of His Majesty's Privy Council.

Furthermore, under sec. 48 of the Exchequer Court Act, it is enacted that, "in adjudicating upon any claim arising out of any contract in writing the Court shall decide in accordance with the stipulations in such contract and shall not allow compensation to any claimant on the ground that he expended a larger sum of money in the performance of his contract than the amount stipulated for therein."

The suppliant is not entitled to any portion of the relief sought by his petition of right herein.

*Action dismissed.*

Solicitor for suppliant: *P. J. Jolicoeur.*

Solicitors for respondent: *Bernier, Bernier & de Billy.*