

JOHN HENRY ROSS BURROUGHS,)
 ELZÉAR ANTOINE DÉRY AND) CLAIMANTS ; 1891
 JOHN JACKSON FOOTE.....) Mar. 24.

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

The Liquor License Act, 1883, s. 6—Salaries of License Inspectors—Approval thereof by Governor-in-Council—Negligence of officer of the Crown—Damages.

By the 6th section of *The Liquor License Act, 1883*, the Boards of License Commissioners for the various license districts in the Dominion were empowered to fix the salaries of license inspectors, subject to the approval of the Governor-in-Council.

Held, that such approval could not be given by a Minister of the Crown.
 2. Laches cannot be imputed to the Crown, and, except where a liability has been created by statute, it is not answerable for the negligence of its officers employed in the public service.

THIS was a claim against the Crown for money paid by the Board of License Commissioners appointed under *The Liquor License Act, 1883*, for the License District of the City of Quebec, in excess of the salaries determined to be paid to the License Inspectors for such district by the Governor-in-Council.

The facts of the case are fully stated in the judgment.

November 18th, 1890.

Burroughs for the claimants :

Casgrain, Q.C. and *Hogg, Q.C.* for the respondent.

BURBIDGE, J. now (March 24th, 1891) delivered judgment.

The claimants were the License Commissioners, under *The Liquor License Act, 1883*, for the License District of the City of Quebec. By the 6th section of the Act it was provided that the Board of License

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Commissioners for each License District should appoint a Chief Inspector of licenses, and one or more Inspectors; and fix their salaries, subject to the approval of the Governor-in-Council; and by the 56th section that all sums received by the Commissioners on applications for licenses, or on the issue thereof, or for fines or penalties, should form the License Fund of the District, and be applied under regulations of the Governor-in-Council for the payment of the salaries and expenses of the Commissioners and Inspectors and for the expenses of the office of the Board, and the administration of the Act. The License Fund for the District of the City of Quebec amounted, during the claimants' term of office, to \$4,480. In the adjustment of their accounts, the Minister of Inland Revenue, who was charged with the duty of administering the Act, allowed the claimants \$832.24 for general expenses, \$1,852.66 for the salaries of Inspectors, and \$2,521.33 for their own services as Commissioners, the difference (\$726.23) between the sum of the amounts so allowed and the \$4,480. received on account of the License Fund, being paid by the Minister to the claimants out of an appropriation made by Parliament. The Commissioners had, however, under circumstances to which it will be necessary to refer, paid to the Inspectors for salaries the sum of \$3,431.42, and instead of receiving for their own services \$2,521.33 as was intended and with reference to which there is no question, they have in the result received therefor only \$942.57. For the difference, \$1,578.76, they now prosecute their claim, which has been referred by the Minister to the court.

The claimants were appointed Commissioners on or about the 8th February, 1884. On the 19th of that month they appointed a Chief License Inspector at a salary of \$1,200. per annum, payable monthly, and on the day following two Inspectors at yearly salaries

of \$400 each, payable weekly. By circular letter of the 10th of March, 1884, the Commissioner of Inland Revenue (as the deputy of the Minister of Inland Revenue is designated) asked the several License Boards to notify the Department of Inland Revenue of the appointment of Inspectors under *The Liquor License Act*, 1883, and the rate of salary which such Boards proposed to pay for such services, in order that a complete schedule of the same might be laid before the Governor-in-Council for confirmation. In reply to this circular the claimants, by letter of the 14th of the same month, communicated to the Minister of Inland Revenue the names of the persons that they had appointed Chief Inspector and Inspectors, respectively, and the salaries that they had fixed. Their letter concluded as follows:—

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In regard to the payment of salaries we beg to state that our Chief Inspector will be paid by the month, and the other two by the week, out of the license fund in our hands, unless instructions are given us to act otherwise.

The above subject to approval under the provisions of the said Act.

No instructions to the contrary were given and the claimants paid the salaries mentioned at the rate and in the manner proposed by them. On the 6th August, 1884, the Commissioner of Inland Revenue addressed the following circular letter to the chairman of each Board of License Commissioners. I cite from the circular printed in English, that printed in French, a copy of which the claimants received, being to the same effect :

(Copy).

L. L. Act.

[G. 88.]

DEPARTMENT OF INLAND REVENUE,

OTTAWA, August 6th, 1884.

To the Chairman of

The Board of License Commissioners,

District of.....

SIR,—

Repeated enquiries having been made as to the remuneration of Com-

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missioners under *The Liquor License Act* of 1883, and the payment of their expenses, and the expenses and salaries of the Inspectors appointed by them, I beg to state that it is hardly likely that the Governor-in-Council will consider any proposed regulations under authority of the 56th section of the Act until the question of the validity of the Act itself has been determined by the Supreme Court. Owing to the Provinces not having been ready to argue the case in June, when the matter was first submitted to the Supreme Court, an extension to September had to be acceded to, so that definite regulations can hardly be established before October next.

The Department recognizes the difficult position that the License Boards will, in many cases, be placed in by this delay, but is unable in the meantime to give any authoritative advice upon the matter.

In Districts where the revenue accrued upon applications for licenses and license fees is sufficient to meet all anticipated expenditure, the chairman of such Boards will probably feel little hesitation in accepting the responsibility of authorizing disbursements on account of the expenses of the Board, and of the salaries and expenses of the Inspectors, always bearing in mind that the Inspectors' salary is subject ultimately to the approval of the Governor-in-Council, and therefore that any advance on account of it must leave a reasonable margin for any possible divergence of view between the Board and His Excellency-in-Council as to the value of the services rendered.

The question as to the remuneration of the Commissioners must necessarily be left open for the decision of the Governor-in-Council, and it will be patent to every one that that determination must be affected very materially by the decision of the court, which will, in effect, determine whether the position is merely a temporary one or one of a more permanent character—a consideration which must be taken into account in determining the rate of remuneration to be paid.

Your attention is also drawn to the 26th section of the amending Act in view of which the Department is not in a position to authorize or become responsible for any prosecutions for the infringement or violation of the Act. Personally, I have no doubt that, should the validity of the Act be affirmed by the Supreme Court, as is anticipated, the Government will ask Parliament for a sum sufficient to ensure the proper administration of its provisions, whether those provisions relate to Districts within which a revenue shall accrue, or for Districts within which, owing to prohibitory legislation, no such revenue can be expected. At present, however, that provision has not been made, and until the whole question in all its bearings has been considered by the Governor-in-Council, the hands of the Department in relation thereto are tied.

I have the honor to be, Sir,

Your obdt. servant,

(Signed), E. MIALL,  
 Commissioner.

The claimants continued to pay the salaries of Inspectors at the rate at which they had fixed them, and from time to time as occasion required, or the same were demanded on behalf of the Minister of Inland Revenue, they rendered to him statements of account showing such payments. On the 7th of August, 1885, after the decision of the Supreme Court as to the validity of the Act, and pending the appeal therefrom to the Judicial Committee of the Privy Council, the claimants wrote to the Commissioner of Inland Revenue that unless they were instructed to the contrary they would maintain their staff of officers, composed of an Inspector and two deputy Inspectors, as theretofore, having funds in hand which would cover expenses for four or five months more; and on the 14th of that month the Secretary of the Department of Inland Revenue replied that he was directed to state that the course proposed by them was approved.

On the 5th of September, 1885, on the recommendation of the Minister of Inland Revenue, an order of the Governor-in-Council was passed prescribing regulations for determining the salaries of the Commissioners and Inspectors of the several License Districts, to which the claimants, in paying the salaries of their Inspectors, thereafter conformed. The sum of \$1578.76 which they now seek to recover represents, as I have already intimated, the difference between the sum that up to this date they had disbursed for such salaries and that allowed to them in respect thereof under the order-in-council referred to.

If this case depended upon the proper determination of the questions of fact, to which I am about to refer, and it were necessary to decide the same, I should have little hesitation in coming to the conclusion that the evidence, on the whole, supports the claimants' contention that the salaries paid by them to the In-

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spectors were fair salaries ; that the Minister of Inland Revenue acquiesced in such payments ; and that the claimants had reasonable grounds to expect that their action in that respect would be ratified and confirmed. But these facts are not really in issue here. The Minister had, it is clear, no authority to approve of the salaries fixed by the Commissioners ; and it is obvious that what he could not do directly, he cannot be held to have done indirectly. No doubt in the administration of the Act he had occasion to form an opinion as to what the amount of such salaries should be, and to make a recommendation on the subject ; and we find, as we should expect to find, that the order-in-council prescribing the regulations by which such salaries were ultimately determined was passed upon his recommendation. The power to approve was, however, vested in the Governor-in-Council, and could not be exercised by any other authority. Then it is urged that there was unreasonable delay in the determination of the matter, by which the claimants have been prejudiced. But here again the enquiry suggested is irrelevant. Whatever pertinency or force the facts on which the claimants rely might, if determined in their behalf, have in an appeal to the favor of the Crown, they do not disclose sufficient grounds for a judgment against the respondent in this court. The law is well settled that laches cannot be imputed to the Queen, and that She is not answerable for the negligence of Her officers employed in the public service. To the first proposition there is no exception, and to the second none except such as have been created by statute (1).

(1) Chitty's Prerogatives of the Crown, 379, 381. Per Ritchie, C.J., in *The Queen v. The Bank of Nova Scotia*, 11 Can. S. C. R. 10 ; *The Queen v. McFarlane*, 7 Can. S. C. R.

216 ; *The Queen v. McLeod*, 8 Can. S. C. R. 1 ; and other cases cited in the judgment in the *City of Quebec v. The Queen*, 2 Ex. C. R. 252.

There will be judgment for the respondent, and the costs will, if moved for, follow the event.

*Judgment for respondent, costs reserved.*

Solicitor for suppliants: *L. F. Burroughs.*

Solicitors for respondent: *O'Connor, Hogg & Balderson.*

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