

Privy Council Appeal No. 56 of 1914.

The Holt Timber Company, Limited, - - - *Appellants,*

v.

Albert McCallum - - - - *Respondent.*

FROM

THE SUPREME COURT OF ONTARIO (APPELLATE DIVISION).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 20TH OCTOBER 1915.

Present at the Hearing:

THE LORD CHANCELLOR.	LORD PARKER OF WADLINGTON.
VISCOUNT HALDANE.	LORD SUMNER.
LORD PARMOOR.	

[Delivered by THE LORD CHANCELLOR.]

The appellants in this case are a Timber Company, who hold timber licenses from the Province of Ontario, in the District of Parry Sound, and the respondent is a lumberman, who, during the season of 1912 and 1913, carried out logging operations for the appellants.

The territory covered by the timber licenses is traversed by a river, known as the Maganetawan River, which flows into the Georgian Bay; and, in the spring of 1913, the appellants were making arrangements for the carriage down this river of the logs that had been cut in the previous winter. Two distinct processes were required for the purpose of completing the operations.

[48] J. 449. 90.-8, 1915. E. & S.

The one consisted in putting the logs into the river and allowing them to be carried by the stream down to a point known as Byng Inlet Station, where the river is crossed by the Canadian Pacific Railway bridge. The other is described as "putting the logs into storm booms," and this second operation would begin at a point below the railway bridge, where the first ceased.

It appears that in the early part of March 1913, interviews took place in the woods between the representatives of the appellants and the respondent, at which there was discussion as to the terms upon which the respondent would carry out one or both of these processes, and they culminated in a final interview on or about the 21st of March.

There is no doubt that at these interviews the respondent offered to take the logs down to the Byng Inlet Station at the price of one dollar for a thousand cubic feet; he also offered to put them into storm booms for a further sum of 25 cents per thousand feet.

The first proposal was accepted by the appellants on either 20th or 21st March, but the second was not.

The work proceeded under the bargain so made, and in the early part of June was still in progress. The appellants then called upon the respondent to perform the further branch of the work at the rate that had been mentioned, and this he declined to do. The contract work having been performed and the appellants, not having paid all the money due under the contract, the respondent sued them for the balance, and they set up in answer a counter-claim for damages for breach of an alleged contract to put the logs into storm booms at 25 cents per thousand.

The whole question in this case is whether or not such a contract was made. Now, from

beginning to end of the story, there is not a single scrap of writing to assist in clearing up the controversy. The determination of the dispute depends entirely upon what took place in the woods at the interviews which ended on 20th or 21st March. This is essentially a question of fact, and if it has been properly determined by the Judge, who saw and heard the witnesses, it would be impossible to advise that his finding should be reviewed; if, on the other hand, the facts that he found were either facts not relevant and appropriate to the determination of the dispute, or facts that were unsupported by the evidence before him, the appellants would be entitled to have the decision questioned.

In their Lordships' view, however, the learned Judge's judgment, though it might have been expressed in clearer language, shows plainly that he placed before himself the right question for determination; and the shorthand notes of the evidence afford abundant proof that there was material to support the conclusion at which he arrived.

There are three possible views of the matter.

The first is, that two proposals were put forward—the one to do the work down to Byng Inlet Station for a dollar a thousand; the other, to take them the whole distance for an extra 25 cents.

The second, that the offer was to take the logs down to Byng Inlet Station for one dollar per thousand, and, if requested, to take them on for a further 25 cents.

The third, which is a variant of the second, that, as a consideration for the payment of one dollar per thousand logs for the first part of the operation, an option was reserved to the appellants to require the respondent to do the last part of the work at the price named.

Now the learned Judge states his view of the matter in the following words :—

“ I find from the evidence in this case that plaintiff offered to drive the logs of the defendants to the bridge over the Maganetawan River for the sum of one dollar per thousand feet; and, further, for twenty-five cents per thousand feet to the storm booms further down the river. The first offer was accepted, and the driving done upon the terms of the contract.”

This is a clear statement of the first of the three possible views of the situation above referred to. He then continues :—

“ The second offer, spoken of as an option, although I do not think it was more than an offer, was not accepted, and it was never a complete offer, as Mr. Holt in his evidence says if sorting was to be done defendant would allow an additional amount.”

The latter branch of this sentence was unnecessary. It was sufficient to state that when the two independent proposals were put forward in March one only was accepted, as this would by implication negative the other. The learned Judge then deliberately rejects the third hypothesis; and though he does not appear to have placed before himself the second of the three heads, this was unnecessary when he had found in favour of the first. That there was evidence to support the finding is clear. The respondent frequently referred to his proposal as an option. Their Lordships regard this merely as the misuse of a conventional phrase, and it was so regarded by the learned Judge who saw the witnesses. It was not an option in any sense, excepting that it was an offer which the appellants could have accepted or rejected when the bargain was made. Now the evidence in support of the decision of the learned Judge is ample, and to show that this is so it is only necessary to refer to a few of the questions and answers. The following sentences

are taken from the evidence of the respondent in cross-examination :—

" 84. When was that option given?—A. It must have been about 10 days before they accepted the offer to drive—some time before.

" 85. You gave them the option to have the logs driven from the bridge to the storm booms for 25 cents extra?—A. Yes. They didn't accept.

" 86. You do not deny that the option was given?—A. No. I gave them an option, but they didn't accept it. It was a verbal option."

The defendant's manager, Mr. Flanders, gave evidence to the same effect, as will be seen from questions 410 to 413, which are in these terms :—

" 410. Then I want your account of the making of this contract with McCallum. I understand that you and Mr. Holt had an interview with McCallum about the 20th of March; is that correct?—A. Yes, there was an interview about the 20th of March, but prior to that I had an offer from McCallum to the Holt Timber Company, through me, to do this work.

" 411. Did McCallum come to you or did you go to him?—A. He came to me. The matter came to a head on the 20th and 21st of March, when Mr. Holt was at Deer Lake, and at McCallum's camp in the woods.

" 412. What was said?—A. McCallum was to go ahead with the driving of these logs to below the railway bridge at one dollar a thousand, with Holt Timber Company having the option for him to deliver them in storm booms for 25 cents.

" *His Honour*: Was the option in writing?—A. No, it was verbal. The option was in this way, that the delivered price was 1.25 in storm booms.

" *His Honour*: Was that said?—A. Not in so many words.

" 413. What was said?—A. The conversation was about as I have stated, it was the essence of it. Perhaps not the exact words."

There is undoubtedly plenty of evidence to support the view put forward by the appellants, but that evidence is definitely rejected by the learned Judge; and it becomes unnecessary to consider what the reasons were that led the respondent to refuse to renew in June the proposal that had not been accepted in March.

In their Lordships' view, no question of law arises for decision in this case at all; the proper facts have been selected and determined by the learned Judge who tried the case, and there is no reason to question his judgment. They will humbly advise His Majesty that the appeal be dismissed with costs.



In the Privy Council.

THE HOLT TIMBER COMPANY,
LIMITED,

v.

ALBERT McCALLUM.

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