

16, 1937

In the Privy Council.

No. 9 of 1936.

APPEAL FROM THE SUPREME COURT OF  
CANADA.

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BETWEEN

MARITIME ELECTRIC COMPANY LIMITED

*(Plaintiff) Appellant*

AND

GENERAL DAIRIES LIMITED

- - *(Defendant) Respondent.*

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RESPONDENT'S CASE.

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PART I.—STATEMENT OF FACTS.

1. The Appellant Company is a private company which sells electrical power in the City of Fredericton, New Brunswick. The rates to be charged for the service are subject to the approval of the Public Utility Commission of New Brunswick. The Respondent Company carries on business in Fredericton manufacturing and selling butter, ice cream and other milk products. The power used by the Respondent has been purchased from the Appellant from the time the Respondent commenced business.

RECORD.

2. For the purpose of measuring the amount of electricity used the Appellant installed a meter on the Respondent's premises and it was the duty of the Appellant's servants to read this meter each month and to submit to the Respondent a bill of the amount payable. This was done and each month the Respondent paid the amount as submitted, believing the same to be in full satisfaction of the electricity supplied.

p. 9, ll. 38  
to 41.

3. The Respondent purchased from milk producers the milk and cream used in its business and it paid for same prices which varied in accordance with Respondent's manufacturing costs. The cost of power directly affected this.

p. 10, ll. 33  
to 40.

RECORD.

4. After the Respondent had been carrying on business in this way for 28 months the Appellant claimed that the Appellant had been making an error during all this time, and also during the time that the Respondent's predecessors had been manufacturing on the same premises; that the meter which was used on the premises should have had its dial readings multiplied by 10; that while the Respondent had paid \$546.28 which was the sum of the bills delivered by the Appellant the amount should have been \$2478.10 and that the Respondent still owed \$1931.82.

p. 10, ll. 23  
to 27.p. 11, ll. 5  
to 20.

5. The Respondent refused to pay this amount because it had believed the statements rendered by the Appellant to be true statements and had acted upon them as such and had used them in fixing the prices paid to the milk producers and as a result had paid out large sums which it would not otherwise have paid. 10

6. The Appellant brought action for the amount and the Respondent pleaded estoppel. The facts were agreed upon.

7. The case came for trial before Richards J., who held there was no estoppel. This decision was affirmed by the Court of Appeal of New Brunswick. The Supreme Court of Canada reversed this decision and directed judgment to be entered in favour of the Respondent with costs throughout. 20

## PART II.—GROUNDS.

8.—(a) The agreed facts establish that there was a valid estoppel in this case.

(b) The provisions of The Public Utilities Act (Chapter 127 Revised Statutes of New Brunswick, 1927) do not deprive the Respondent of the right to set up a defence of estoppel.

## PART III.—ARGUMENT.

9. It is submitted that the rule laid down in *Greenwood v. Martins Bank* (1933) A.C. 51 and in *Maclaine v. Gatty* (1921) 1 A.C. 376 must decide this case. 30

In *Greenwood v. Martins Bank* (1933) A.C. 51, Lord Tomlin stated the rule of estoppel simply and clearly as follows:—

“The essential factors giving rise to an estoppel are I think:

“ (1) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made.

“ (2) An act or omission resulting from the representation whether actual or by conduct by the person to whom the representation was made.

“ (3) Detriment to such person as a consequence of the act or omission.” 40

10. In *Maclaine v. Gatty* (1921) 1 A.C. 376, Lord Birkenhead had stated the rule of estoppel in equally simple language. At page 386 he said : RECORD.

10 “The learned counsel cited various authorities in which these doctrines have been discussed but the rule of estoppel or bar as I have always understood it is capable of extremely simple statement. When A. has by his words or conduct justified B. in believing that a certain state of facts exists and B. has acted upon such belief to his prejudice A. is not permitted to affirm against B. that a different state of facts existed at the same time. Whether one reads the case of *Pickard v. Sears* or the later classic authorities which have illustrated the topic one will not I think greatly vary or extend this simple definition of the doctrine.”

11. It is submitted that the case at bar falls completely within the principle laid down in the above cases. The Appellant undertook to measure the amount of energy supplied and to render a bill for the amount payable. It did so. These monthly bills were intended to be acted upon. The Respondent believed the statement of the amount payable to be true and acted upon it and as a result paid out large sums of money to the persons supplying milk and cream more than it would or could have paid if 20 bills for the amounts now claimed for power had been delivered. p. 11, ll. 16  
to 20.

We have all the required elements therefore to constitute estoppel. The judgment of Supreme Court of Canada follows these cases.

12. It is contended by the Appellant, however, that by reason of Section 16 of The Public Utilities Act (Chapter 127 R.S.N.B. 1927) the ordinary principle does not apply between these two parties and that by reason thereof estoppel cannot be set up against the Appellant.

The relevant provisions of that Statute are as follows :

30 “16. No public utility shall charge, demand, collect or receive a greater or less compensation for any service, than is prescribed in such schedules as are at the time established, or demand, collect or receive any rates, tolls or charges not specified in such schedules.

17. The rates, tolls and charges named in the schedules so filed as aforesaid, shall be lawful rates, tolls and charges, until the same are altered, reduced or modified as herein provided.

40 18.—(1) Every public utility which, directly or indirectly by any device whatsoever, charges, demands, collects or receives from any person, firm or corporation, a greater or less compensation for any service rendered or to be rendered by it, than that prescribed as provided herein, or than it charges, demands, collects or receives from any other person, firm or corporation for a like and contemporaneous service, is guilty of unjust discrimination, which is hereby prohibited and liable to a penalty of not less than fifty dollars nor more than five hundred dollars,

RECORD.

which may be imposed by the board; and if the same is not paid within fifteen days after the imposition thereof, the non-payment of the same shall be ground (after public notice thereof in The Royal Gazette) for proceedings to be taken by the Attorney-General to dissolve the public utility so in default.

(2) This section shall not apply to any contract which was current on the 26th day of March, 1900.

19.—(1) No person, firm or corporation shall knowingly solicit, accept or receive any rebate, concession or discrimination in respect to any service in, or affecting or relating to, any public utility whereby any such service is by any device whatsoever, or otherwise, rendered free or at a less rate than that named in the schedules in force, as provided herein, or whereby any service or advantage is received other than is herein specified. 10

(2) Any person, firm or corporation violating the provisions of this section is liable to a penalty of not less than fifty dollars nor more than five hundred dollars, for each offence, which may be imposed by the Board, and if said penalty is not paid within fifteen days after the imposition thereof, the chairman of the board may transmit a statement, under his hand, to the Registrar of the Supreme Court, of the imposition of such penalty. 20

(3) On receipt of such statement, such Registrar shall issue execution against the person, firm or corporation on whom the penalty was imposed, directed to the sheriff of the county in which the head office or principal place of business of the said person, firm or corporation is situate, directing him to levy on the goods and chattels, lands and tenements of the said person, firm or corporation, for the amount of the said penalty, with costs of execution, sheriff's fees and poundage."

13. It is submitted that these provisions were intended to prevent a public utility from knowingly or intentionally giving one customer a preference over another customer. It was never intended to be used as an instrument for inflicting injury on an innocent customer or of compelling an innocent customer to make good to a utility losses which the utility may have sustained by reason of its own mistakes and negligences. On the agreed facts the Respondent paid out large sums of money as a result of being misled by the Appellant's statements. Notwithstanding this the Appellant claims it is entitled to be paid just as if it had not caused the Respondent to pay out these moneys. 30

14. The Appellant relies upon certain decisions of the United States Courts under The Interstate Commerce Act relating to freight rates. Decisions of great harshness have been laid down under that Act because the United States Courts have held that that Act involves a matter of public policy that must be enforced at any cost. 40

15. It is submitted the opinion expressed by the Supreme Court of Canada disposes satisfactorily of any such argument in this case : RECORD.

“ We know of no reason why public policy in New Brunswick should demand so rigid a rule of construction of the Public Utilities Act of that Province. We see no reason why Section 16 of that Act should not be construed in the spirit in which the Companies Act and other such Acts in England are construed.” p. 77, ll. 18 to 22.

16. The 25th Section of The Companies Act 1867 seems to create a prohibition at least as positive as the Section of the Public Utilities Act on question here; but this did not deprive a party of his right to set up estoppel.

*Birkinshaw v. Nichols* (1878) 3 AC. 1004, 48 L.J. Ch. 179;  
*Bloomenthal v. Ford* (1897) App. Cases 156;  
*Re The British Farmers Pure Linseed Oil Cake Company* (1878) 47 L.J. Ch. 415;  
*In re London Celluloid Co.* 57 L.J. Ch. 843;  
*Skyring v. Greenwood* (1825) 4 B. & C., 281;  
*Holt v. Markham* (1923) 1 K.B. 504.

17. In the present case the Appellant seeks to say that the Statute has not been complied with by the Appellant because it has not submitted correct statements of account. But the Respondent was induced by the action of the Appellant to believe the law had been complied with.

“ If the company has so acted as to preclude itself from denying that the Act of Parliament has been complied with—in other words, if it has estopped itself, that is conclusive evidence that the Act of Parliament has been complied with, as against the Company; and in such cases, although the Act of Parliament has not in fact been complied with, yet the Company must be precluded from saying that it has not, and must be taken to have conclusively admitted that it has.” per Bowen, L.J. in *Re London Celluloid Co.* (supra) p. 848.

It is respectfully submitted therefore that estoppel lies and that the appeal should be dismissed.

W. LENNOX McNAIR,  
 Counsel for Responder

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